


भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY

भाग II—खण्ड २
PART II—Section 2

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० ५८ ए] नई दिल्ली, बुध्द्वर्तिवार, नवम्बर १५, १९७३/कार्तिक २४, १८९५
No. 58A] NEW DELHI, THURSDAY, NOVEMBER 15, 1973/KARTIKA 24, 1895

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Report of the Joint Committee on the Bill further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969 was presented to Lok Sabha on the 15th November, 1973:—

COMPOSITION OF THE COMMITTEE

Shri Nawal Kishore Sharma—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Syed Ahmed Aga
3. Shri Bedabrata Barua
4. Shri H. K. L. Bhagat
5. Shri Somnath Chatterjee
6. Shri Tridib Chaudhuri
7. Shri Khemchandbhai Chavda
8. Shri C. Chittibabu
9. Shri S. R. Damant
10. Shri Madhu Dandavate
11. Shri G. C. Dixit
12. Shrimati V. Jeyalakshmi
13. Shri Popatlal M. Joshi

REPORT OF THE JOINT COMMITTEE

1. The Chairman of the Joint Committee to which the Bill* further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969, was referred, having been authorised to submit the report on their behalf, present their report with the Bill, as amended by the Committee annexed thereto.

2. The Bill was introduced in Lok Sabha on the 11th August, 1972. The motion for reference of the Bill to a Joint Committee of the Houses was moved in Lok Sabha by Shri K. V. Raghunatha Reddy, the then Minister of Company Affairs on the 23rd August, 1972 and was adopted.

3. Rajya Sabha concurred in the said motion on the 26th August, 1972.

4. The message from Rajya Sabha was reported to Lok Sabha on the 29th August, 1972.

5. The Committee held 38 sittings in all.

6. The first sitting of the Committee was held on the 2nd September, 1972 to draw up their future programme of work. The Committee decided to invite memoranda from various Chambers of Commerce and Industry, associations, organisations, individuals, etc., interested in the subject matter of the Bill, and also decided to issue a Press Communique in this behalf fixing the 20th September, 1972 as the last date for receipt of memoranda. The Chairman was authorised to decide, after examining the memoranda received from various associations, organisations, etc., as to which of them should be called upon to give oral evidence before the Committee.

7. 130 memoranda on the Bill were received by the Committee from various associations, organisations, individuals, etc.

8. At their second sitting held on the 27th September, 1972, the then Minister of Company Affairs (Shri K. V. Raghunatha Reddy) explained in detail the implications of the various provisions of the Bill. At this sitting, the Committee also decided to extend the time for the submission of memoranda upto the 10th October, 1972 in view of the requests from several associations, organisations, etc.

9. At their 13th sitting held on the 13th December, 1972, the Committee decided to hold their sittings at Calcutta and Bombay from the 1st to 4th January, 1973 and 22nd to 24th January, 1973 respectively to

*Published in the Gazette of India Extraordinary, Part II, Section 2, dated the 11th August, 1972.

hear oral evidence of the representatives of various associations, organisations, etc.

10. The Committee heard evidence given by the representatives of various Chambers of Commerce and Industry, associations, organisations, etc. at their sittings held at Delhi on the 28th and 29th September, 1972; from 23rd to 28th October and from 11th to 13th December, 1972, at Calcutta from the 1st to 4th January, 1973, at Bombay from the 22nd to 24th January, 1973 and at Madras from the 13th to 16th June, 1973.

11. The report of the Committee was to be presented to the House by the 13th November, 1972. The Committee were granted four extensions of time—the first extension on the 13th November, 1972 upto the 23rd February, 1973, the second extension on the 22nd February, 1973 upto the 30th July, 1973, the third extension on the 27th July, 1973 upto the 5th September, 1973 and the fourth extension on the 30th August, 1973 upto the 16th November, 1973.

12. At their twenty-first sitting held on the 7th February, 1973, the Committee decided that (i) the evidence given before them might be laid on the Table of both the Houses; and (ii) two copies each of the memoranda received by the Committee from various associations, organisations, etc. might be placed in the Parliament Library after the presentation of the Report, for reference by the Members of Parliament.

13. At their sitting held on the 10th July, 1973, the Committee decided to take up general discussion on each clause of the Bill prior to taking up clause-by-clause consideration of the Bill. Accordingly, the Committee at their sittings held from the 10th to 13th and 21st July, 1973, held a general discussion on the amendments proposed in relation to the various clauses of the Bill. Shri H. R. Gokhale, Minister of Law, Justice and Company Affairs also explained his tentative reactions with regard to the various suggestions made by the Members of the Committee in relation to the various clauses of the Bill.

14. The Committee considered the Bill clause-by-clause at their sittings held from the 15th to 18th October, 1973.

15. The Committee considered and adopted the Report on the 8th November, 1973.

16. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

17. *Clause 2—[Sub-clause (i)] :—*

(a) The sub-clause seeks to insert a new clause (18A) in section 2 of the principal Act defining the meaning of expression "group". The Committee feel that in order to achieve the object of the proposed provision, the definition should be made more comprehensive so that the cases where two or more individuals, associations, firms or bodies corporate, or any combination thereof, are in a position to exercise control could also be covered. The definition has been amended accordingly.

(b) In view of the insertion of the definition of "group", the Committee feel that it is advisable to provide for a forum for the decision on any doubt or dispute as to whether two or more individuals, associations, firms or bodies corporate or any combination thereof do or do not constitute a "group". Accordingly, an explanation to the definition of "group" has been added.

Sub-clause (iii).—The definition of the expression "Secretary" has been modified to make it harmonious with the provisions of clause 30 (originally clause 29) of the Bill (new section 383A). Other amendments made are of consequential nature.

18. *Clause 3.*—By clause 3, two new sections were sought to be introduced by the Bill namely, sections 4A and 4B. Section 4B contains a wider definition of the expression "same management". Since that expression has already been defined in sub-section (1B) of section 370 and the definition of "same management", as contained in sub-section (1B) of section 370 of the Companies Act, 1956, has been adopted in the Monopolies and Restrictive Trade Practices Act, 1969, the Bill sought to omit sub-section (1B) from section 370 and also sought to make a consequential amendment in the Monopolies and Restrictive Trade Practices Act, 1969, so that the wider definition of "same management", as contained in section 4B, may be available for the determination of inter-connection of companies to which the Monopolies and Restrictive Trade Practices Act, 1969 applies.

The Committee feel that the new definition of "same management" is so wide that it is likely to restrict the operations of small and medium-sized companies and is also likely to retard formation of capital and impede inter-corporate investments which are needed for the sturdy growth of the corporate sector. The Committee, therefore, feel that, so far as the definition contained in sub-section (1B) of section 370 is concerned, that definition should be retained so that that definition may continue to apply to the companies governed by the Companies Act, 1956. But so far as the companies governed by the Monopolies and Restrictive Trade Practices Act, 1969, are concerned, they should be governed by the wider definition of "same management" and, consequently, the wider definition of "same management", as contained in section 4B, should be transferred to the Monopolies and Restrictive Trade Practices Act, 1969. New section 4B has, therefore, been omitted from clause 3 and clause 43 of the Bill (originally clause 39) has been amended to include therein the wider definition of "same management".

19. *New Clause 4.*—In view of the proposal to transfer to the Company Law Board some of the powers which were so long exercised by the Courts, the Committee feel that the strength of the Company Law Board might be raised to nine so that the matters in relation to which the powers of the court are proposed to be transferred to the Company Law Board might be disposed of expeditiously by one or more Benches formed by the Board. In order to enable the Company Law Board to discharge its quasi-judicial functions it is also necessary to clothe it with the powers of a civil court to enforce the attendance of witnesses and production of documents, etc., and also to provide for punishment for its contempt. The Committee also recommend that it should be ensured that persons having adequate legal qualifications and experience are appointed as members of the Company Law Board to discharge its quasi-judicial powers.

New clause 4 has, accordingly, been inserted by the Committee to provide for the above matters.

20. *Clauses 5, 9, 13 and 14 [Original clauses 4, 8, 11 and 12].*—These clauses seek to transfer to the Central Government the powers to decide certain matters which are at present decided by the Courts. A point was raised before the Joint Committee that, since these powers are of a quasi-judicial nature, they should not be exercised by the Central Government. The Committee, therefore, feel that instead of conferring these powers on the Central Government, these powers should be conferred by the statute itself on the Company Law Board to enable it to exercise such powers quasi-judicially.

These clauses have been amended accordingly.

21. *Clause 6 [Original clause 5]—(a) Sub-clause (i).*—According to existing section 43A (1), where one or more bodies corporate hold not less than twenty-five per cent of the paid-up share capital of a private company, such private company becomes a public company. The sub-clause, as introduced, proposes to reduce the said percentage from twenty-five to ten. The Committee feel that the reduction of the percentage of shareholding to ten is likely to hamper the formation and growth of private limited companies in the small scale sector, especially in the rural areas, and, therefore, the provisions of section 43A (1) should not be disturbed. The Committee further feel that private companies which are less capital intensive but have a considerable consumer and employee interest because of its high turnover, should be brought within the ambit of deemed public companies irrespective of its paid-up share capital. The Committee, therefore, recommend that a private company, irrespective of its paid up share capital, shall become a public company if it has an average annual turnover of one crore rupees or more. The Committee have, therefore, inserted new sub-section (1A) after sub-section (1) of section 43A, to achieve these objectives.

(b) *Sub-clause (ii).*—The Bill, as originally introduced, sought to provide that a private company holding ten per cent. or more of the paid-up share capital of a public company will be deemed to be a public company. The Committee feel that the fixation of the percentage at ten is likely to hamper the growth and formation of capital of public companies. The Committee, therefore, recommend that the percentage be increased to twenty-five. The sub-clause has been amended accordingly. A consequential change in the number of the sub-section has been made.

(c) *Sub-clause (iii).*—The Committee feel that a private company in which the entire share capital is held by another private company need not become a public company. The sub-clause has, therefore, been omitted in order that the exemptions under section 43A as it stands may continue to be in force.

(d) *Sub-clause (iv) [Renumbered as sub-clause (iii)].*—The amendments are of a consequential nature. The Committee feel that private companies which do not have an average annual turnover of rupees one crore or more should file with the Registrar a certificate to that effect.

(e) *New sub-clause (iv).*—The Committee feel that every private company having share capital should file with the Registrar, alongwith

the annual return, a certificate signed by both the signatories of the annual return, stating that since the date of the annual general meeting with reference to which the last annual return was submitted, or in the case of a first return, since the date of the incorporation of the private company it did not hold twenty-five per cent. or more of the paid-up share capital of one or more public companies.

A new sub-section (9) has been added to Section 43A accordingly.

(f) The Committee have inserted an 'Explanation' including therein definitions of the expressions "relevant period" and "turn-over" so that there may not be any difficulty with regard to the interpretation of those expressions.

22. *Clause 7 [Original clause 6].*—This clause seeks to insert new sections 58A and 58B.

(i) Sub-section (2) of the proposed section 58A provides that no company shall invite or accept any deposit except after the publication of an advertisement specifying therein the financial condition, management structure and other particulars of the company. The Committee feel that such advertisement should not be necessary for the acceptance of deposit from the directors or share-holders of the company. It would be enough if acceptance by a company of deposits is made in accordance with the rules made by the Central Government after consultation with the Reserve Bank of India. So far as invitation by a company of deposits from the public is concerned, such invitation should, however, be made in accordance with the rules made by the Central Government under sub-section (1) and such invitation shall not be made except after the publication in the prescribed form and in the prescribed manner of an advertisement including therein the financial position of the company.

(ii) The Committee feel that the deposits which have so far been accepted by the companies may have been either utilised by them or invested in long-term securities and, as such, the companies may not be in a position to refund the deposits within thirty days from the commencement of the Amending Act. Consequently, if the provisions as contained in the Bill introduced in Lok Sabha are maintained, most of the companies may be forced to take loans from nationalised or other banks for the repayment of the deposits and such loans may put undue strain on the financial position of the companies. The Committee, therefore, feel that the provisions with regard to refund of deposits should be liberalised and, accordingly, the Committee recommend that—

(a) pre-Amending Act deposits, which were accepted by companies in accordance with the directions made by the Reserve Bank under Chapter IIIB of the Reserve Bank of India Act, 1934, should be allowed to continue in accordance with the terms of such deposit. But no such deposit shall be renewed, after the expiry of the term thereof, unless the deposit is such that it could have been accepted by the company if the rules made by the Central Government under sub-section (1) were in force at the time when the deposit was accepted by the company.

- (b) pre-Amending Act deposits, which were accepted by companies in contravention of the aforesaid directions made by the Reserve Bank, should, however, be refunded in accordance with the terms of such deposit. But where such deposits are not refundable earlier, they should be refunded in a phased manner, namely, one-third of such deposit should be refunded before the 1st day of April, 1974; another one-third should be refunded before the 1st day of April, 1975 and the balance should be refunded before the 1st day of April, 1976. Such refund will, however, be without prejudice to any action which may be taken under the Reserve Bank of India Act, 1934, for the acceptance of the deposit in contravention of directions made by the Reserve Bank of India.
- (c) post-Amending Act deposits, which are accepted in contravention of the rules made by the Central Government under sub-section (1), should be refunded within thirty days from the date of acceptance of such deposits or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(iii) The Committee feel that, where there has been an omission or failure to refund any deposit in accordance with the provisions indicated above, a fine should be imposed on the company for such contravention and the amount of the fine shall not be less than twice of the amount in relation to which the refund has not been made and out of the fine, if realised, an amount equal to the amount of the deposit, which has not been refunded, will be paid by the court trying the offence to the depositor, and, on such payment, the liability of the company to make the refund shall stand discharged. Further, where there has been an omission or failure to make any refund of the deposit in accordance with the provisions indicated above, every officer of the company who is knowingly guilty of the omission or failure or who has knowingly or wilfully authorised such omission or failure shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(iv) The Committee feel that the provisions of the Companies Act, 1956 relating to prospectus should, as far as practicable, apply to an advertisement referred to in section 58A. Accordingly, section 58B, as sought to be introduced by the Bill, has been redrafted.

23. *New clause 10.*—The Committee feel that the distinction made by the existing Act between the preference shares issued by a public company before and after the commencement of the Companies Act, 1956, should be removed and all the preference shares should be placed on the same footing, so that no extra voting right is enjoyed by the preference shares which are issued before the 1st day of April, 1956. Accordingly, section 90 of the principal Act has been substituted by a new section.

24. *Clause 12 [Original clause 10].*—The clause introduces new sections 108A to 108H.

I. *New section 108A.*—The amendments made in this section are of a consequential nature.

II. *New section 108B.*—(i) This section stipulates restriction on the transfer of shares. The Committee feel that provisions of section 108B should not affect the liquidity of shares and the period of restriction on the transfer of shares might be limited to sixty days and where any transfer to the proposed transferee is not approved by the Central Government, it would be open to the company to give a fresh intimation with a proposal to transfer the share to any other transferee. Sub-section (2) has been amended accordingly.

(ii) Amendment in sub-section (3) of section 108B is of a clarificatory nature.

(iii) The Committee feel that the payment of market value of shares should be made forthwith where there is no dispute as to the market value or the market value has been mutually agreed upon. But where there is a dispute as to the market value, the value as estimated, by the Central Government or the corporation shall be paid forthwith and the balance may be paid within thirty days from the date of determination of the market value by the court. Accordingly, a new sub-section (4) has been inserted in section 108B.

(iv) The Committee feel that since section 108B provides for restriction on the transfer of shares, it is not necessary to make the acquirer punishable. Clause (c) of sub-section (6) of section 108B has, therefore, been omitted.

Other amendments in this section are of drafting nature.

III. *New section 108C.*—Section 108C stipulates restriction on the transfer of shares of foreign bodies corporate having an established place of business in India in cases where holding of shares is ten per cent. or more of the nominal share capital of the foreign company concerned, except with the previous approval of the Central Government. The committee feel that the approval of transfer of shares should not be refused unless it is prejudicial to the public interest. The Committee also feel that the scope of the section should be limited to transfer of holdings of shares by bodies corporate and should not cover transfers of holding by individuals.

Clause (ii) of sub-section (1) has been amended accordingly. Other amendments made are of verbal nature.

IV. *New section 108D.*—This section freezes the voting right in respect of the shares or block of shares in relation to which any direction has been made by the Central Government. The Committee feel that the voting rights should not be frozen for all time to come.

Accordingly, sub-section (4) has been added to section 108D which provides that, on the re-transfer of the shares to the seller, he shall have voting and other rights in respect of the shares provided that he has refunded the purchase money to the purchaser.

V. *New section 108E.*—The Committee feel that if the approval of the Central Government under section 108A or 108C is not granted within sixty days, it should be presumed to have been given.

A new section 108E has been inserted accordingly.

VI. *New section 108H.*—The Committee considers it advisable to confine the operation of the scope of proposed sections 108A etc. to companies covered by Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969 in view of their particular bearing upon the aspect of concentration of economic power. Section 108H has been substituted to give effect to this view.

25. *Clause 15 [Original clause 13].*—A point was raised in the Joint Committee that, in view of the provisions of section 187C, the companies may be dragged into court for the determination of the person to whom the dividend is to be paid; and, as a result of such litigation, payment of dividends may be indefinitely delayed. The Committee feel that with a view to allaying these apprehensions, it might be clarified that the obligation of the companies to pay dividends will become discharged if dividends are paid to the registered shareholders in accordance with the provisions of section 206.

A new sub-section (7) to section 187C has been added accordingly.

26. *Clause 17 [Original clause 15].*—This clause seeks to insert new section 204A which provides for imposition of restrictions on persons who had functioned in the distant past as managing agents or secretaries and treasurers to any office of profit in the company. The Committee are of the opinion that such restrictions should be imposed only on those persons who had functioned as managing agents or secretaries and treasurers after the 15th August, 1960.

The clause has been amended accordingly.

27. *New clause 18.*—Sub-section (3) of new section 205A imposes certain restrictions on the declaration of dividends from accumulated profits. A point was raised in the Joint Committee that this provision may encourage the distribution of the entire profits for a year by way of dividends and such distribution may be detrimental to the interests of the company as well as of its shareholders. The Committee feel that a certain percentage of the profits, not exceeding ten, may compulsorily be transferred to the reserves which would be both beneficial to the company and the shareholders because such reserves would be available to the company for ploughing them back for the expansion of the activities of the company and would also be available for declaration of dividends in a lean year, subject to the rules as may be made by the Central Government as envisaged in the proposed section. The clause provides for the above matters. A proviso has been added to make it clear that voluntary transfer of a higher percentage of profits to the reserves are not prohibited by the proposed sub-section but such transfer will have to be made in accordance with the rules made by the Central Government.

28. *Clause 19 [Original clause 16].*—This clause, as introduced, required that a company should transfer the entire amount of the dividends to a special dividend account within seven days from the date of declaration of the dividend. It was pointed out to the Joint Committee that this provision was very harsh and might lead to various

difficulties. The Committee was also informed that since, under the Act, the companies had forty-two days' time to pay the dividends, the provision requiring them to deposit the entire amount of dividends to a special account within seven days was an unreasonable one. The Committee, therefore, feel that only the amount which remains unpaid after the expiry of forty-two days from the date of declaration of dividends may be transferred to the special dividend account and the interest accruing on such amount should enure to the benefit of the shareholders to whom the dividends remain unpaid and may be paid to them in proportion to the amount due to them.

The clause has been amended accordingly.

29. *Clauses 21 and 22 [Original clauses 18 and 19].*—The amendments made are of drafting and verbal nature.

30. *Clause 23 [Original clause 20].*—(i) The Committee are of the opinion that in view of the proposed ceiling on the number of audits to be undertaken by an auditor, it is necessary that every company while appointing an auditor under sub-section (1) of section 224 shall obtain a certificate from the auditor to the effect that the appointment or re-appointment, if made will be in accordance with the limits specified by sub-sections (1B) and (1C).

A proviso to sub-section (1) of section 224 has been added accordingly.

(ii) New sub-section (1B) proposed to be inserted in section 224 provides for the rotation of audit work amongst the auditors. This was done with a view to bringing about a dissociation of auditors from groups of companies so that they may not have any temptation to shield the shortcomings of the managements from the shareholders. It was also done with a view to achieving a more equitable distribution of audit work amongst the different auditors so that the younger sections of the audit profession may have better chances of advancement in the profession.

The evidence which was adduced before the Joint Committee, however, established that the system of rotation might be evaded very easily and that such rotation would not serve the purpose for which the provisions were conceived.

The Committee have considered this matter in all its aspects and feel that a ceiling on the number of audits would achieve the objects which the Government had in view when the Bill was introduced. Since companies are of different sizes, the ceiling will be meaningful only if it is fixed in such a way that both the number and the size of the companies are taken into account in determining the ceiling. The Committee are of the view that a ceiling at twenty companies might be put; such a ceiling will sufficiently serve to break the evil of continued association of chartered accountants practising as auditors, singly or in firms, with groups of companies, as such groups generally consist of much more than 20 companies. Out of these 20 companies, not more than ten should be companies having paid-up share capital of Rs. 25 lakhs or more. In the case of firms of auditors, the Committee feel that the ceiling may be

20 per partner of the firm so that firms may not get an advantage over the individual auditors. The fixation of the number of audits per partner of the firm may encourage large firms to retain their advantage of size by taking in more partners. Thus, opportunities may grow for the members of the accountancy profession of becoming partners of auditing firms. Where, however, any partner of a firm of auditors is also a partner in any other firm or firms of auditors, the overall ceiling in relation to such partner will also be 20, so that he may not be able to get an extra advantage by becoming a partner in more than one firm of auditors and thereby defeat the purpose of the provisions contemplated in the Bill. The clause has been amended accordingly.

31. *Clause 24 [Original clause 21].*—The clause seeks to insert new section 224A providing that in the case of a company in which not less than twenty-five per cent of the subscribed share capital is held by a public financial institution or a nationalised bank or a general insurance company, or in any combination thereof, the appointment or re-appointment of an auditor shall have no effect unless approved by the Central Government. The Committee feel that the Government should not be overburdened with the responsibility for giving approvals. The Committee, therefore, feel that in such cases the appointment or re-appointment of an auditor should be made by the company by a special resolution.

The clause has been amended accordingly.

32. *Clause 25 [Original clause 22].*—By this clause, a proviso to sub-section (1) of section 233B is sought to be added which provides that if the Central Government is of opinion that sufficient number of Cost Accountants within the meaning of the Cost and Works Accountants Act, 1959 are in practice and are available, for conducting the audit of cost accounts, the Government may by notification in the Official Gazette direct that on and from such date as may be specified, no Chartered Accountant within the meaning of Chartered Accountants Act, 1949 shall conduct the audit of cost accounts of any company.

The Committee feel that cost audit should be conducted only by qualified cost accountants. Therefore, the proposed amendment could be made more positive by providing that if the Central Government is of opinion that sufficient number of cost accountants are not available, the Government may, by notification, direct that for a specified period of time, chartered accountants who fulfil the prescribed qualification may also conduct the audit of cost accounts of any company.

The proviso has been amended accordingly.

33. *Clause 26 [Original clause 23].*—The amendment is of a clarificatory nature.

34. *Clause 27 [Original clause 24].*—This clause seeks to insert new section 294AA empowering the Central Government to prohibit the appointment of sole selling agents in certain cases. The Committee feel that the prohibition may be limited, to a period to be fixed by the Central Government so that on the expiry of the specified period, it may be open to the Central Government to review the whole matter.

Sub-section (1) has been amended accordingly.

35. *Clause 28 [Original clause 25].*—By this clause, a proviso to sub-section (1) of section 297 is being added to provide that in the case of companies having paid-up share capital of not less than rupees twenty-five lakhs, no contract in which the directors are interested shall be entered into without the approval of the Central Government. The Committee feel that if such a provision is made, it may cause avoidable inconvenience to many companies, particularly the small and medium-sized companies and incidentally increase unduly the work-load for the Government in having to deal with a large number of applications for its approval. The limit has, therefore, been increased to rupees one crore.

The proviso has been amended accordingly.

36. *Clause 29 [Original clause 26].*—The amendments made are of a drafting nature.

37. *Original clauses 27 and 28.*—These clauses have been omitted consequent on the changes made in clause 3 of the Bill.

38. *Clause 30 [Original clause 29].*—The amendments made are of a drafting nature.

39. *Clause 33 [Original clause 32].*—The Central Government is empowered to notify that the provisions of the Act, as may be specified by it, shall apply to foreign companies in which one or more citizens of India hold a certain percentage of shares. The Committee feel that, in order to enable the Central Government to know the shareholdings of the Indian citizens, it is necessary to require foreign companies to submit their annual returns to the Registrar of Companies. The provisions of section 209A and sections 234 to 246 should be made applicable only to the Indian business of a foreign company.

The clause has been amended accordingly.

40. *Clause 35 [Original clause 34].*—The Committee feel that a ceiling with regard to audit work should also apply to Government companies.

The clause has been amended accordingly.

41. *Clause 36 [Original clause 35].*—The amendment is of a drafting nature.

42. *New clause 37.*—This clause has been inserted in order to confer upon the Company Law Board, powers to accord approval, etc., subject to conditions, and to prescribe fees in relation to approval, sanction consent, confirmation etc.

43. *New clauses 39 and 40.*—The Committee on Subordinate Legislation of both Houses of Parliament have approved a revised model clause for the laying, before Parliament, of rules, etc. made by the Central Government under Central Acts. These clauses have been inserted with a view to amending sub-section (3) of sections 641 and 642 of the Act with a view to bringing these sections in conformity with the revised model clause approved by the abovementioned Committees.

44. *New clause 43.*—This clause reproduces, with suitable modifications, new section 4B which was sought to be inserted by clause 3 of the Bill.

45. *Clause 1.*—According to the clause as introduced in the Lok Sabha, the amending Act would come into force on the date on which it is assented to by the President. Since the Bill envisages the framing of rules in consultation with the Reserve Bank of India in relation to certain matters, and also the prescription of fees etc., the Committee feel that it may not be possible for the Central Government to frame the rules before assent is given by the President to the Amending Act. In the circumstances, the Committee recommend that the Central Government might be empowered to bring the Amending Act into force on such date as that Government may, by notification in the Official Gazette, appoint.

The clause has been amended accordingly.

46. *Enacting Formula.*—The amendment made is of a formal nature.

47. The Committee recommend that the Bill, as amended, be passed.

NEW DELHI;

November 15, 1973.

Kartika 24, 1895 (Saka).

NAWAL KISHORE SHARMA,

Chairman,

Joint Committee.

MINUTES OF DISSENT

I

I cannot fully agree with the report of the Joint Committee on the Companies (Amendment) Bill, 1972.

If any radical changes in the existing Companies Act are to be implemented effectively, it is absolutely necessary that structural changes are introduced in the Boards of Directors and managements of companies, so that these Boards can represent the interests of labour, consumers and shareholders.

It is also necessary to give proportional representation to the shareholders on the Boards of Directors, when a group of shareholders representing a voting power of at least ten per cent. demands such a representation.

Unfortunately the Companies (Amendment) Bill, 1972 and the report of the Joint Committee thereon have not even touched those sections of the Companies Act which deal with the constitution of the Boards of Directors and management.

To prevent the collusion between the auditors and the companies without depriving the companies of the expertised knowledge of experienced auditors, it is necessary to introduce a joint audit system providing for the appointment of one auditor from the panel of senior auditors and one from the panel of junior auditors; both the panels being drawn up by the Institute of Chartered Accountants of India.

The report of the Joint Committee has not accepted this important provision for the joint audit system.

If the Companies Act has to work satisfactorily the meaning of "public financial institutions" for the purposes of this Act has to be widened so as to bring into the ambit of "public financial institutions", General Insurance Corporation of India and Nationalised Banks also.

The Joint Committee report does not accept this important aspect regarding public financial institutions and I would not like to be a party to the exclusion of these two important institutions from the ambit of "public financial institutions."

NEW DELHI:
November 8, 1973.

MADHU DANDAVATE

II

With deep disappointment in our minds we have to include our minutes of dissent as hereunder:—

The Bill is a halfhearted measure. Its provisions will hardly be able to meet adequately with cases of abuse or distortions in the system of

corporate management and holdings. Some of the rigorous provisions relating to take-over have been diluted during the discussions before the Joint Committee, while some provisions are directed towards further perpetuation of bureaucratic control. The jurisdiction of the Courts has been curtailed and more powers have been conferred on the Company Law Board, whose performance in the past has neither been able to rouse confidence in the minds of the people who had occasions to take recourse to the Board nor helped in the proper and speedy implementation of the provisions of the Act. The reasons which have been put forward for curtailing court's jurisdiction are not only unconvincing, they are also not bonafide. Whereas proceedings before the Courts are open to public view, the bureaucratic procedure is clandestine. In any event the aggrieved party will come to court in the end. So excepting creating a fresh army of white collar bureaucrats no other results can be achieved although scope for corruption will increase. Bureaucratic control is also discernible from the provisions made for deposit of the unpaid amount of dividend with the Government. This will only lead to multiplicity of white collar Government employees for which there is no necessity at all. No company has yet been known to have misappropriated money from dividend account. The provision of requiring security from share-holders is a ridiculous and irresponsible measure.

We feel that this kind of unimaginative legislation can hardly achieve proper formulation of law relating to corporate management or achieve desirable objectives. Too many restrictions requiring unnecessary secretarial work will not help formation and growth of the small companies, although there should be adequate provisions in the law to check mismanagement and to provide remedial measures in all cases of abuse which can be done by enacting certain procedure and enforcing strict observance of the same. There are still various lacunae in the company laws for the removal of which no attempt has been made in the present Bill. Till now the law does not provide for participation by the workers in the management of the companies. The Bill, as well as the Act, does not lay down any guidelines for the discharge of duties and functions by the directors who may be nominated by the Government in the Boards of various companies. Similarly, no attempt has been made to lay down the principles on which the Public Trustee has to exercise his powers and functions. Guidelines have not been laid down to indicate for what act or omission a director can be removed. Everything has been left to the caprices of an inefficient bureaucracy.

Too sweeping restrictions regarding deposits particularly from share-holders or directors will only hamper the proper functioning of the companies without any concomitant benefit. The provision in the Bill for obtaining permission from all stock exchanges to which applications have been made for dealing with shares before the shares are allotted by a company will create avoidable uncertainties.

While restrictions have been sought to be imposed on the appointment of secretary, consultant or advisor so far as the former managing agents, secretaries or treasurers or associates thereof are concerned, a time-limit of five years has been put. We do not find any rational explanation for such time-limit. The object seems to be to allow such persons to stage a come-back in the company's management after the period expires.

The provisions in the Bill for making over the unpaid amount of dividend to the Government and for making applications to the Government for recovery of the same are objectionable features of the Bill. More so, is the provision for payment of unpaid dividend to share-holders upon security being furnished. This will very seriously hit a large number of small share-holders. We do not find any reason why any amount of unpaid dividend, which has remained unpaid for no fault of the company, should be appropriated by the Government and should not be utilised by the company, which has generated the funds, for its own purposes. Moreover calling for security will virtually result in forfeiture of the amount to Government.

Although the original provision in the Bill with regard to the appointment of auditors has been considerably improved, we feel there was and still is scope for further improvement.

We feel that the matter of cost audit should be left with the cost accountants. The oft-repeated excuse either for avoiding cost audit or for cost audit to be made by chartered accountants because of inadequacy of the number of cost accountants does not seem to be borne out by the available statistics as to the present number of cost accountants in the country. Statutory requirements to carry out cost-audit in respect of manufacturing and producing concerns and proper implementation of such provision will do away largely with the manipulation in the costing of products of such concerns. It is unfortunate that the Bill does not make such cost audit compulsory.

Various offences have been created in the Bill which will be, what are known as absolute offences, that is, persons may be held guilty of offences without any mens-rea. On principle, we have been opposed to creation of such offences because in many cases such provisions will operate harshly and in most cases such provisions will be utilised for objectives other than those which seem to have prompted making of such provisions.

One particularly significant and objectionable provision of the Bill is the provision with regard to compulsory appointment of company secretaries. The provision is to be found in clause 29 of the amending Bill seeking to add a new section 383A to the Companies Act, 1956 which makes it obligatory to every company having a paid up capital of Rs. 25 Lakhs or more to employ a whole time company secretary having such qualification as may be prescribed.

In the notes on clause 29 of the draft Bill the Government has stated "*....this provision will also help the growth of the profession of company secretaries and provide employment opportunities to qualified secretaries.*" This is significant. This discloses how the mind of the Government works. This reveals the reactionary, anti-people and blissfully ignorant nature of the pseudo-socialists heading the Government and their "Committed bureaucrats". There are about 3,000 companies in India with paid-up capital of Rs. 25 Lakhs or more. By making it obligatory for such companies to employ a person having a diploma of a company secretary, special privilege and employment opportunities are being created in favour of individuals whose qualifications are not likely to contribute towards increase in production. Minimum six crores of rupees per annum would have to be spent on such unproductive personnel. It has been argued that since due to systematic encroachment by

the bureaucracy into the day to day administration of a company the management of a company has become complicated, it is necessary to have the assistance of these diploma holders. One does not see why this must be made obligatory. What for the Directors are there? What is the function of the Managing Director or the Manager? Who are the people those are doing this job now? Why replace them? Why lawyers who with 10 years experience are considered to be competent enough to fill the highest judicial posts in the country or the chartered accountants should be excluded from being employed as secretaries of a company? Why create an unproductive privileged class? The answer to all these are not far of seek. It has always been the policy of this Government to pursue two distinct policies (1) to preserve the monopolists; (2) to create side by side a bureaucratic capitalism which would serve as cloak and cover for monopoly capital and faithfully serve the interests of the monopolists from behind the screens. By treating all companies having paid-up capital of more than 25 lakhs (whose number to-day exceeds 3,000) the big and small companies have been put under the same hardship. It is not difficult to appreciate who would suffer in such a case. This would help the monopolists because lots of money which could have been spent on productive labour, would have to be spent by smaller companies on these secretaries. And there would come into existence a large group of white collar employees, the top bureaucrats of the private sector who with their assistants, stenographers, typists and peons will produce paper work only. A large part of the surplus if any would be swallowed by them. This is what is happening everywhere as a result of every Government policy. "Production" and "Productive labour" are mere slogans with this Government. Attempt is always to over centralise everything and thus create an ever-increasing army of superfluous bureaucrats.

We wonder whether ever and if so when will Government realise that the prospects of socialism increased national income, surpluses production and many other desirable things continue to recede with the growth in the number of unproductive workers.

SALIL KUMAR GANGULI

SOMNATH CHATTERJEE

NEW DELHI;
November 8, 1973

III

The stated object of this Bill is to deal with the problem of the growing concentration of economic power in the hands of private monopoly capital achieved through "take-over bids" and other means, as innumerable other malpractices and abuses of the private corporate sector which have assumed serious proportions.

In his opening remarks made before the Joint Committee, the then Minister for Company Affairs, Shri Raghunath Reddy, stated that the Government considered this Bill as one of the means of advancing towards a socialist society through the instrumentality of the law.

Judged by this criterion, it is necessary to make certain general observations on the Bill before considering the utility of its clauses in dealing with the problems posed by it.

The long experience of advanced capitalist countries, and even our own experience of the last decade and more has proved that legislation and administrative measures have failed to prevent the rapid growth of private monopoly concerns what to speak of controlling or restricting their activities. The Note circulated by the Department of Company Affairs explaining the inadequacy of existing legislation in dealing with this question frankly states that "it has been the experience that not a single case of take-over bids could be regulated or undesirable one prevented by the Government."

The root of this failure does not lie in faulty legislation or the sins of omission and commission of the administrative machinery.

The root lies in this that existing legislation has all along conceded the position that the growth of private monopoly in industry and finance is intrinsically conducive to the development of industrial efficiency and economy of scale, and as such, to the development of national production. The only objectionable aspect of the growth of such monopoly, it is argued, is that it often resorts to anti-social practices like extracting unconscionable profits from the people and so on. Naturally, what follows is that the task of anti-monopoly legislation is to prevent or curb such practices.

The fact of the matter, however, is that despite its tall claims, private monopoly capital operates, not as a force for increasing social production but for restricting it considering the available productive capacity of industry at any given moment.

Such has been the actual experience all over the capitalist world. To refer to two illustrations from our own experience of recent years, the textile and the sugar industries are there. Monopolists in some of our engineering industries have done the same. The question of the very partial utilisation of our existing industrial capacity is also there. All this goes to prove that the very basis of monopoly profits, not an aberration, is the restriction and not the expansion of production.

Considering particularly the extremely acute crisis of production in our country for which private monopoly capital is dominantly responsible, it is our opinion that Indian monopoly concerns must be taken over by the Government without further delay. Amended legislation will not solve the problem.

Coming to the question of the abuses and malpractices of the private corporate sector as a whole, including private limited companies, the concern shown by the relevant clauses of the Bill is for the protection of the interest of small and scattered shareholders of companies, the small investors, often referred to as the minority shareholders. The question of depositors entrusting their hard earned savings to joint stock companies is also dealt with. Such shareholders and depositors are no doubt at the mercy of the dominant owners of companies, and being helpless in protecting their interests against the latter, are generally cheated by them and have to suffer serious losses.

Some clauses also deal with the interest of the Government and public financial institutions where they happen to be minority shareholders in joint stock companies in the private sector.

But a vital question is ignored by these provisions. It is the working class, whether in the public or private sectors of industry, that actually produces the products of industry. As such it has every right to participate effectively in the management of industry, both at shop level where production takes place and at the managerial level, i.e. in the boards of directors of industrial concerns or financial institutions. The existing multiplicity of trade unions is no argument for denying this right to workers. National Trade Union Centres in our country have put forward proposals for the election of workers' representatives by all the workers in each industry to its governing bodies.

At present workers not only have no right in respect of the general management of industry but are helpless even when employers defraud them of their dues in respect of their provident fund and gratuity.

Legalist arguments may be put forth that the Company Law is no place to make a provision for the exercise of this right for which separate legislation may be enacted. But this contention cannot be accepted by those who hold that the company law needs amendment in the interest of an advance towards a socialist society.

Workers' effective participation in the management of industry is, however, needed not only in defence of the interests of the working class. It is also needed as a powerful instrument for exposing and rectifying the abuses and frauds practised by the monopolists and the private corporate sector as a whole whether in the sphere of financial transactions or in the actual technical processes of industry. No other agency is as much qualified to deal with such practices effectively and speedily.

This brings us to another serious shortcoming of this Bill, viz., that it makes the bureaucracy the main instrument for dealing with the problem of private monopoly concentration and the abuses of the private corporate sector.

Some abuses may be discovered and rectified by such administrative intervention, but it also involves making the existing company law, complicated and vast as it is, even more labyrinthian and complicated. That, as we know by experience, gives a handle to the powerful vested interests in industry to delay, if not to defeat, the ends of law by resorting to endless legal proceedings. That also gives them an opportunity for corrupting weak and careerist elements in the administrative services.

A glaring instance of this approach of the Bill is the manner in which it tries to tackle the problem of the concentration of audit. Putting a ceiling in the number of audits that an auditor can undertake is not an effective method for tackling the abuses arising from such concentration. The nationalisation of audit is the correct solution.

The provisions of this Bill have to be considered bearing these limitations in view. They will not solve the basic problems dealt with by the Bill. All the same to a certain extent they can help to bring to light the harmful practices of the monopolists and the private corporate sector and thereby enable Parliament and public opinion to deal with them more effectively. As such they can be helpful.

NEW DELHI;
November 11, 1973

S. G. SARDESAI
D K. PANDA

IV

It is painful to note that with their hard labour which the Joint Committee has put in, it could not achieve its aim to amend the Bill comprehensively in order to make it effective to check the cases of abuses inherent in the company system or distortion of the system which admittedly has assumed comparatively serious proportions.

Certain provisions of the Companies (Amendment) Bill are still ambiguous. Some of them have knowingly been included by the Government, in such a way that they will mar the growth, development and smooth working of companies both private and public, and such provisions are still in the Bill.

Providing for punishment for imprisonment in financial matters is also a point in which we could not agree.

It is also unfortunate that under clause 31 of the Bill, the Government has been given wide powers to appoint as many directors as it wants. The Government may appoint directors on political motives, who may be absolutely ignorant of the business and their official in-experience, they may completely ruin the business.

We regret and are unable to agree to the conclusions of the Joint Committee particularly on the following clauses for which we submit our following amendments:—

(i) *Clause 2*—omit “or has the object of exercising”, occurring in clause (18A) of section 2.

(ii) *Clause 2*—for explanation substitute the following explanation:—

“*Explanation*—The Group shall be deemed to have control over a body corporate if (a) it holds more than 50 per cent of the voting power in the body corporate or (b) it controls the composition of the Board of Directors of such Body Corporate or majority of the Directors of such Body Corporate or the constituent and/or nominees of the group.”

(iii) *Clause 11*—(New section 94A)—after sub-section (3), the following sub-section (4) may be added:—

“(4) Where any request has been made to the Central Government by a company under this section final orders must be passed within ninety days of the receipt of the application and if such orders are not passed the application shall be deemed to be allowed.”

(iv) *Clause 12*—in sub-section (2) of section 108B after clause (b) add the following clause (c):

(c) No orders shall be passed unless the company and also the person who intends to transfer any such share is given an opportunity of being heard.”

(v) *Clause 12* in clause (b) of sub-section (6) of section 108B for the words “imprisonment for a term which may extend to three years” substitute the words “fine which may extend to five thousand rupees”

- (vi) *Clause 12*—in clause (b) of sub-section (2) of section 108C for the words “imprisonment for a term which may extend to three years” substitute the words “fine which may extend to five thousand rupees.”
- (vii) *Clause 12*—in clause (c) of sub-section (2) of section 108C omit the words “or with imprisonment for a term which may extend to three years, or with both”.
- (viii) *Clause 12*—in sub-section (1) of section 108F for the words “imprisonment for a term which may extend to five years and shall also be liable to fine” substitute the words “fine which may extend to five thousand rupees”.
- (ix) *Clause 26*—sub-section (3) of section 269 may be omitted.
- (x) *Clause 27*.—in sub-section (2) of section 294AA the words “unless such appointment has been previously approved by the Central Government” may be deleted.
- (xi) *Clause 27*—in sub-section (3) of section 294AA the words “and the approval of the Central Government” may be deleted.
- (xii) *Clause 31*.—for sub-clause (i) substitute “(i) in sub-section (1), for the words ‘not more than two persons’ substitute ‘not more than three persons’ ”.
- (xiii) *Clause 31*.—for sub-clause (ii) substitute “(ii) in sub-section (2), for the words ‘not more than two persons’ substitute ‘not more than three persons’ ”.

We are, therefore, of the opinion that the Companies (Amendment) Bill, 1972, as originally drafted and even after some amendments by the Joint Committee is a piece of legislation which gives wide powers to the Government not needed to control or regulate the abuses prevalent in the company affairs but for interference and regimentation. The powers vested in the Government are most likely to be misused in the interest of the party in power and will not serve the healthy growth of Industry.

NEW DELHI;

November 12, 1978.

R. R. SHARMA

JAGDISH PRASAD MATHUR

V

We regret we have to append this minute of dissent for inspite of the great amount of time, care and thought that has undoubtedly been given by the Committee to the Bill, and the modification that have, as a result, been recommended, the Bill remains unsatisfactory. It is no ones contention that there is no justification for the objectives which are sought to be achieved through this Bill. Quite obviously, it is essential at the same time to see that every possible care is taken to ensure that the remedies proposed are not worse than the disease. The cumulative effect of the Bill, even as now modified, is to confer upon the Government, which means the bureaucracy, widespread powers of interference in company management. These powers can only be exercised with the help of a large, efficient and honest administrative organisation, and having regard to our experience hitherto, there is scarcely any warrant for assuming that the Government will be able easily to organise an administrative

set up of this calibre. Moreover, such degree of bureaucratic interference will have a seriously dampening effect on private enterprise especially in the sphere of small and medium scale enterprise.

Having made these general observations, we would draw attention to some of the more important amendments and strongly commend that a further thought be given to them along lines indicated.

*Definition of "Group" (Clause 2).—*To begin with, we would urge that the concept of "group" has not been as precisely and clearly defined as is essential in this very important and basic context. In its application in the definition of "companies under the same management", it is possible that two companies which are entirely unconnected with each other may be deemed to be interconnected. The result will be that the restrictive provisions of the Monopolies and Restrictive Trade Practices Act would be attracted by both the companies and one of them which has no financial or other relationship with the other company will be unnecessarily subjected to the requirements of the Monopolies and Restrictive Trade Practices Act. It will be difficult for such companies to establish that they have a completely separate and different identity, in no way related to the other body corporate. It is not in our view enough to provide that if any question arises as to whether two or more individuals, association, firms or bodies corporate or any combination thereof constitute a group, the Company Law Board after giving reasonable opportunity to them of being heard will decide the same. However, this is not an altogether satisfactory solution. A definition should have precision and clarity so the individuals will be able to identify their position. Several alternative definitions were suggested by witnesses in the course of their evidence before the Joint Committee. It is a matter for regret that none of them received due consideration.

*Definition of "same management" (Clause 43).—*The definition of two bodies corporate to be deemed under the same management is now incorporated as an amendment to section 2 (g) of the Monopolies and Restrictive Trade Practices Act. The definition of the term, however, is very vague and unintelligible. A definition should be precise and not give rise to unintended consequences.

Even though two bodies corporate have nothing in common their respective business are entirely different and they are controlled by two different persons, yet they would be regarded as being under the same management if by virtue of the definition of the group, the two persons controlling these two bodies corporate are said to belong to a group. This would be the effect of the words "any of the constituents of the same group".

Sub-clause (iv) of the Explanation also requires to be modified as it will completely distort the true position. It is not inconceivable that a person who is one of three directors in a small private company may also be one of the directors of a big company which may have a board of twelve persons. This person may be on the board of the big company because of his special qualifications in a particular line and the company considers his knowledge, experience and association with the company useful. However, in such a situation the two companies, one small and insignificant, and the other big and financially strong, will be deemed to be under the same management. The provisions of the Monopolies and Restrictive Trade Practices Act will then become operative and there will

be difficulties even for the small company if it wants to obtain an industrial licence or otherwise wants to expand its activities, because it will be deemed to be associated with a larger house. This is bound to be a disincentive to the entrepreneur and professional management, a result which is contrary to Government's proclaimed policy.

Private Company (Clause 6).—The clause provides that any private company with an average annual turnover of rupees one crore over a period of three years either preceding or following the date on which the Act comes into force shall, irrespective of its paid up capital, become a public company. It is submitted that it is necessary to have a definite relationship between the paid up capital and turnover, otherwise it will very badly hit several small scale industries which are able to achieve high turnover with low capital investment. Instances of such industries are cotton ginning and pressing, oil milling, manufacture of plastic goods, paper packaging, etc. No social purpose would be served by such a sweeping change.

It is, therefore, suggested that paid up capital must be one of the criteria, even though it may be fixed at a lower figure of only rupees fifteen lakhs, in order to safeguard the interests of small scale industries.

Acquisition of Shares (Clause 12).—The clause provides that no individual, group, constituent of a group, firm, body corporate or bodies corporate under the same management may acquire severally or jointly except with Government approval shares exceeding 25 per cent of the paid-up share capital of a company.

The concept of control of a company should be clearly defined in the Act. It is clearly desirable that one concept runs throughout the provisions of the Act. Some sections of the Act and the Bill contemplate one-third of the share-holding of a company's capital for the purpose of control while some other provisions like this clause envisage twenty-five per cent. of the shareholding in a company. The definition of "same management" contemplates one-third of the shares of a company. It may be pointed out that the Dutt Committee also adopted one-third shareholding as the criterion for control. It is only reasonable that the same criterion should be adopted here also.

Inspection (Clause 21).—The powers of inspection of the Registrar and the Inspecting officer have been considerably enlarged under this provisions. No doubt under the existing section 209 an inspection may be ordered without notice to the management. But this goes further. Any officer may ask for any information and make a report without indicating to the company or its officer the allegations and without limitation on the powers of the Inspectors. The company will not be given a copy of the report nor will it have any knowledge of what report is made against it. It is only reasonable that the elementary norms of judicial procedure and principles of natural justice should be followed in such matters. An opportunity should be given to the company to explain matters and the arbitrary powers given to the Inspector should be curtailed by suitable safeguards.

Appointment of Managing Director (Clause 26).—This clause provides that the Central Government shall not accord its approval for the appointment or re-appointment of a managing director or whole-time

director under sub-section (1) unless it is satisfied that it is in the interest of the company to have a managing director or a whole-time director. Such a provision is totally objectionable. It is not Government which is running the company and cannot possibly be in a position to know whether the company needs a managing director or not. The intention of the Government is clearly to go only into the merits of the person proposed to be appointed as their managing director and decide whether he is fit to be a managing director or not, if so, what remuneration should be paid to him. The provision should be modified and made definite and in line with the intention stated, in the Note on the Clause, which states in terms that the objection of amending section 269 is to take power for Government to approve the appointment.

*Appointment of auditors by special resolution (Clause 24).—*The Companies (Amendment) Bill provides that where twenty-five per cent. of more of the subscribed capital of a company is held by financial institutions, banks, etc., the appointment of an auditor shall be made by a special resolution only.

It is not understood why the entire subscribed share capital is considered for the purpose of this section instead of capital having voting rights. In the passing of special resolution, the preference share-holders will have no say unless they have a voting right. The section, as worded at present, will only increase the work of the companies. The intention of the Government can only be amply carried out if the section is made applicable to cases where twenty-five per cent. of the share capital carrying voting rights is held by public financial institutions, etc.

*Declaration of particulars of beneficial owner by a registered holder of shares (Clause 15).—*The effect of the Section is two fold. Firstly, any registered holder of any share will be under obligation to make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares. Secondly, any person who holds a beneficial interest in a share shall be under obligation to declare the nature of his interest and particulars of the person in whose name the shares stand registered in the books of the company. The notes on clauses state that section 187C makes it obligatory for both the benamidar as well as the beneficial owner to make declarations. However, the wording of the section is such that it goes much beyond the stated intention of the Government. It will be clear that there is a definite relationship between a benamidar and a beneficial owner and where such relationship exists, in other words, where a benamidar holds a share for the benefit of the beneficial owner, both the benamidar as well as beneficial owner are aware of the situation. However, there must be any number of cases where no such relationship exists and the registered holder of a share simply does not know about the beneficial owner, although the beneficial owner is aware of the person in whose name the share stand,

A specific example will make the point clear. It is normal practice for share brokers and dealers in shares to buy and sell shares and, in the process, get some shares registered in their names. Now, supposing

person had bought 10,000 shares of a certain company and having got them registered in his name, sold them away. Out of his buyers, those holding 9,900 shares got the shares registered in their respective names but one person who had bought 100 shares simply neglected to do so. It is well known that the method of trading on the stock exchanges is such that there is a long chain of transactions between brokers, dealers, etc., before the shares reach an ultimate buyer. The seller can thus never know who is the ultimate buyer and whether the latter has got the shares registered in his name or not. Since the section would apply to all cases in which the name of a person appears in the register of members of a company as on the date of commencement of the Act, it would appear that a transaction which may have been done several years ago would also come under the scope of this section. A person may not even know that some shares, which were standing in his name in the books of a company 10 or 15 or 20 years ago, are still continuing in his name because the buyer has neglected to get them transferred. In such case, it will be physically impossible for him to comply with the requirements of this section. On the other hand, the penalty, namely Rs. 1,000/- for every day during which the default continues, would amount to rupees one million if the default continues for three years solely through ignorance of the person concerned, whereas the value of the shares concerned may be only Rs. 1,000/-. Making it obligatory for a person to make a declaration when he is not in a position to know the facts is contrary to all principles of natural justice and the penalty prescribed is patently unjust.

The purpose of the Government can easily be served if the onus is placed squarely on the beneficial owner to make a declaration because the beneficial owner must know the name of the person in whose name the shares are registered. It may be provided that failure to do so will make him lose all claim to the shares in question. The registered holder should be made to make a declaration only if asked by the Company Law Board to do so, and then again only if he is in a position to give the desired information. As stated earlier, he may not even know about all the companies in whose books his name may appear as share holder and secondly, it may be impossible for him to know the name of the present beneficial holder of such shares. Even if he comes to know about the first part all he may be able to say is that he does not know the name of the beneficial owner and the Government would then be free to take such action in regard to the shares in question as it deems fit.

*Unclaimed Dividends (Clause 19).—*The Bill retains the proposal that dividends not claimed beyond six months shall be turned over to the central revenues, and that the rightful claimants will, thereafter, have to approach Government, as and when they are in a position to claim the dividend due to them. It is difficult to understand why such a provision is considered to be necessary at all. There has been no complaint that dividends claimed even after a very long period of time had been refused by some stock companies. The money belongs to the company and the shareholders and not to the Government. We would urge a reconsideration—even at this stage because the new provision will result in considerable harassment and trouble to the smaller claimants, who are likely to preponderate for the obvious reason that governmental machinery normally functions with painful slowness, particularly where money has to be disbursed.

Deposits (Clause 7).—It is proposed that an advertisement specifying therein the financial condition, management structure and other particulars of the company should not be necessary for the acceptance of deposits from the directors or shareholders of the company and that it would be enough if acceptance by the company of deposits is made in accordance with the rules made by the Central Government after consultation with the Reserve Bank of India. This decision, however, has not been incorporated by a suitable amendment in sub-clause (2) of new section 58A. It should be specifically clarified.

Finally we would like to make a general reference to the final provisions in the Bill. There can be no two opinions but that punishment must be meted out for offences which are committed knowingly and wilfully. It seems to us desirable to spell out clearly the obligation and responsibilities of the company and its officers. They will not always be in a position to know whether they have violated the law when they do or refrain from doing a particular act. This will be the position for instance under the provisions of new sections 108A or 108B.

NEW DELHI;
November 14, 1973

H. M. PATEL
M. K. MOHTA
MAHAVIR TYAGI

Bill No. 72-B of 1972.

THE COMPANIES (AMENDMENT) BILL, 1972

(AS REPORTED BY THE JOINT COMMITTEE)

[Words underlined or side-lined indicate the amendments suggested by the Committee; asterisks indicate omissions.]

A
BILL

further to amend the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956 and the Monopolies and Restrictive Trade Practices Act, 1969.

BE it enacted by Parliament in the Twenty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 1973.
- (2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.
2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 2,—
 - (i) after clause (18), the following clause shall be inserted, namely:—

“(18A) “group” means a group of two or more individuals, associations, firms or bodies corporate, or any combination thereof, which exercises or is in a position to exercise, or has the object of exercising, control over any body corporate, firm or trust.

Explanation.—If any question arises as to whether two or more individuals, associations, firms or bodies corporate, or any combination thereof, constitute, or fall within, a “group”, the

Short
title
and
com-
mence-
ment.
Amend-
ment of
section 2.

Company Law Board shall, after giving such individuals, associations, firms or bodies corporate, or any combination thereof, a reasonable opportunity of being heard, decide the same;’;

(ii) to clause (25), the following *Explanations* shall be added, namely:—

Explanation I.—For the purposes of this Act, references to “managing agent” shall be construed as references to any individual, firm, or body corporate who, or which, was, at any time before the 3rd day of April, 1970, the managing agent of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, this clause shall remain, and shall be deemed always to have remained, in force;’;

17 of 1969.

(iii) in clause (30), on the expiry of six months from the commencement of the Companies (Amendment) Act, 1973,—

(i) in sub-clause (a), for the words “the secretaries and treasurers or the secretary”, the words “or the secretaries and treasurers” shall be substituted;

(ii) sub-clause (c) shall be omitted;

(iv) in clause (36), after the words “other document”, the words “giving deposits from the public or” shall be inserted;

* * * * *

(v) to clause (44), the following *Explanations* shall be added, namely:—

Explanation I.—For the purposes of this Act, references to “secretaries and treasurers” shall be construed as references to any firm or body corporate which was, at any time before the 3rd day of April, 1970, secretaries and treasurers of any company.

Explanation II.—For the removal of doubts, it is hereby declared that notwithstanding anything contained in section 6 of the Companies (Amendment) Act, 1969, this clause shall remain, and shall be deemed always to have remained, in force;’;

17 of 1969

(vi) in clause (45),—

(a) for the words “any individual, firm or body corporate”, the words “any individual possessing the prescribed qualifications,” shall be substituted;

(b) for the words “purely ministerial or administrative duties;”, the words “ministerial or administrative duties.”*** shall be substituted.

Insertion
of new
section
4A.

3. After section 4 of the principal Act, the following section shall be inserted, namely:—

Public
financial
institutions.

“4A. (1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely:—

(i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913; 7 of 1913.

(ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948; 15 of 1948.

(iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964; 18 of 1964.

(iv) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956; 31 of 1956.

(v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963. 52 of 1963.

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution:

Provided that no institution shall be so specified unless—

(i) it has been established or constituted by or under any Central Act, or

(ii) not less than fifty-one per cent. of the paid-up share capital of such institution is held or controlled by the Central Government.”.

* * * * *

Amendment of Section 10E.

4. In section 10E of the principal Act,—

(i) in sub-section (2), for the word “five”, the word “nine” shall be substituted;

(ii) after sub-section (4A), the following sub-sections shall be inserted, namely:—

“(4B) Without prejudice to the provisions of sub-section (4A), the Board, with the previous approval of the Central Government, may, by order in writing, form one or more Benches from among its members and authorise each such Bench to exercise and discharge such of the Board’s powers and functions as may be specified in the order; and every order made or act done by a Bench in exercise of such powers or discharge of such functions shall be deemed to be the order or act, as the case may be, of the Board.

(4C) Every Bench referred to in sub-section (4B) shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:— 5 of 1908.

(a) discovery and inspection of documents or other material objects producible as evidence;

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses;

(c) compelling the production of documents or other material objects producible as evidence and impounding the same;

- (d) examining witnesses on oath;
- (e) granting adjournments;
- (f) reception of evidence on affidavits.

(4D) Every Bench shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the Bench shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.”.

5 of 1898.

45 of 1860.

Amend-
ment of
sections 17,
18 and 19.

5. (1) In sections 17, 18 and 19 of the principal Act, for the word “Court”, wherever it occurs, the words “Company Law Board” shall be substituted.

(2) Nothing contained in sub-section (1) shall apply to any proceedings under section 17, or under sub-section (4) of section 18, which is pending at the commencement of the Companies (Amendment) Act, 1973, before any Court or to any alteration of the memorandum of a company which has been confirmed, before such commencement, by any Court.

Amend-
ment of
section
43A.

6. In section 43A of the principal Act,—

(i) after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) Without prejudice to the provisions of sub-section (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1973, or incorporated thereafter, is not during the relevant period less than rupees one crore, the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this sub-section:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be or may at any time be reduced, below seven.

(1B) Where not less than twenty-five per cent of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall,—

(a) on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1973, or

(b) where the aforesaid percentage has been first so held before the commencement of the Companies (Amend-

ment) Act, 1973, on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent, of the paid-up share capital of the public company.

become, by virtue of this sub-section, a public company, and thereupon all other provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.”;

(ii) in sub-section (8), after clause (b), the following clause shall be inserted, namely:—

“(c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turnover of rupees one crore or more;”;

(iii) after sub-section (8), the following sub-section shall be inserted, namely:—

“(9) Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, it did not hold twenty-five per cent. or more of the paid-up share capital of one or more public companies.

Explanation.—For the purposes of this section,—

(a) “relevant period” means the period of three consecutive financial years,—

(i) immediately preceding the commencement of the Companies (Amendment) Act, 1973, or

(ii) a part of which immediately preceded such commencement and the other part of which immediately followed such commencement, or

(iii) immediately following such commencement or at any time thereafter;

(b) “turnover”, of a company, means the aggregate value of the goods produced, supplied, distributed or controlled or services rendered, by the company during a financial year.’

7. After section 58 of the principal Act, the following sections shall be inserted, namely:—

‘58A. (1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the

Insertion of new sections 58A and 58B.

Deposits not to be

Invited
without
issuing an
advertisement.

manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members,

(2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless—

(a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), and

(b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.

(3) (a) Every deposit accepted by a company at any time before the commencement of the Companies (Amendment) Act, 1973, in accordance with the directions made by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934, shall, unless renewed in accordance with clause (b), be repaid in accordance with the terms of such deposit.

2 of 1934.

(b) No deposit referred to in clause (a) shall be renewed by the company after the expiry of the term thereof unless the deposit is such that it could have been accepted if the rules made under sub-section (1) were in force at the time when the deposit was initially accepted by the company.

(c) Where before the commencement of the Companies (Amendment) Act, 1973 any deposit was received by a company in contravention of any direction made under Chapter IIIB of the Reserve Bank of India Act, 1934, repayment of such deposit shall be made in the manner specified in clause (d), and such repayment shall be without prejudice to any action that may be taken under the Reserve Bank of India Act, 1934 for the acceptance of such deposit in contravention of such direction.

2 of 1934.

(d) Unless a deposit referred to in clause (c) is repayable earlier under the terms of such deposit, repayment of one-third of such deposit shall be made before the 1st day of April, 1974; repayment of another one-third of such deposit shall be made before the 1st day of April, 1975, and repayment of the balance of such deposit shall be made before the 1st day of April, 1976.

(4) Where any deposit is accepted by a company after the commencement of the Companies (Amendment) Act, 1973, in contravention of the rules made under sub-section (1), repayment of such deposit shall be made by the company within thirty days from the date of acceptance of such deposit or within such further time, not exceeding thirty days, as the Central Government may, on sufficient cause being shown by the company, allow.

(5) Where a company omits or fails to make repayment of a deposit in accordance with the provisions of clause (c) of sub-section (3), or in the case of a deposit referred to in sub-section (4), within the time specified in that sub-section,—

(a) the company shall be punishable with fine which shall not be less than twice the amount in relation to which the repayment of the deposit has not been made, and out of the fine, if realised, an amount equal to the amount in relation to which the repayment of deposit has not been made, shall be paid by the

Court, trying the offence, to the person to whom repayment of the deposit was to be made, and on such payment, the liability of the company to make repayment of the deposit shall, to the extent of the amount paid by the Court, stand discharged;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(6) Where a company accepts or invites, or allows or causes any other person to accept or invite on its behalf, any deposit in contravention of the provisions of sub-section (1) or sub-section (2), as the case may be,—

(a) the company shall be punishable,—

(i) where such contravention relates to the acceptance of any deposit, with fine which shall not be less than an amount equal to the amount of the deposit so accepted,

(ii) where such contravention relates to the invitation of any deposit, with fine which may extend to one lakh rupees but shall not be less than five thousand rupees;

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

(7) (a) Nothing contained in this section shall apply to,—

(i) a banking company, or

(ii) such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Explanation.—For the purposes of this section “deposit” in clause (b) of sub-section (2), nothing in this section shall apply to such classes of financial companies as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

Explanation.—For the purposes of this section “deposit” means any deposit of money with, and includes any amount borrowed by, a company but shall not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

58B. The provisions of this Act relating to a prospectus shall, so far as may be, apply to an advertisement referred to in section 58A.’

Provi-
sions
relating
to pros-
pectus to
apply to
advertise-
ment.

8. In section 73 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) Where a prospectus, whether issued generally or not, states that an application has been, or will be made, for permission for the shares or debentures offered thereby to be dealt

Amend-
ment of
section
73.

with in one or more recognized stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void if the permission has not been applied for before the tenth day after the first issue of the prospectus, or, where such permission has been applied for before that day, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists:

Provided that where an appeal against the decision of any recognized stock exchange refusing permission for the shares or debentures to be dealt with on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956, such allotment shall not be void until the dismissal of the appeal.”;

42 of 1956.

(ii) in sub-section (2), for the words “or has not been granted as aforesaid”, the words “or, such permission having been applied for, has not been granted as aforesaid” shall be substituted;

(iii) for sub-section (5), the following sub-section shall be substituted, namely:—

“(5) For the purposes of this section, it shall be deemed that permission has not been granted if the application for permission, where made, has not been disposed of within the time specified in sub-section (1).”.

Amend-
ment of
section 79.

9. (1) In section 79 of the principal Act,—

(i) in sub-sections (2) and (3), for the word “Court”, wherever it occurs, the words “Company Law Board” shall be substituted;

(ii) in sub-section (2),—

(a) in clause (ii), the words and brackets “(not exceeding ten per cent. or such higher percentage as the Central Government may permit in any special case)” shall be omitted;

(b) to clause (ii), the following proviso shall be added, namely:—

“Provided that no such resolution shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds ten per cent, unless that Board is of opinion that a higher percentage of discount may be allowed in the special circumstances of the case;”.

(2) Nothing contained in sub-section (1) shall affect any issue of shares at a discount which has been sanctioned by the Court or any proceeding relating to such sanction which is pending before the Court at the commencement of the Companies (Amendment) Act, 1973.

Substitu-
tion of
section
90.

10. For section 90 of the principal Act, the following section shall be substituted, namely:—

Savings.

“90. (1) Nothing in sections 85, 86, 88 and 89 shall, in the case of any shares issued by a public company before the commencement

of this Act, affect any voting rights attached to the shares save as otherwise provided in section 89, or any rights attached to the shares as to dividend, capital or otherwise.

(2) Nothing in sections 85 to 89 shall apply to a private company, unless it is a subsidiary of a public company.

(3) For the removal of doubts, it is hereby declared that on and from the commencement of the Companies (Amendment) Act, 1973, the provisions of section 87 shall apply in relation to the voting rights attached to preference shares issued by a public company before the 1st day of April, 1956, as they apply to the preference shares issued by a public company after that date.

Explanation.—For the purposes of this section, references to a public company shall be construed as including references to a private company which is a subsidiary of a public company.”.

11. After section 94 of the principal Act, the following section shall be inserted, namely:—

“94A. (1) Notwithstanding anything contained in this Act, where the Central Government has, by an order made under sub-section (4) of section 81, directed that any debenture or loan or any part thereof shall be converted into shares in a company, the conditions contained in the memorandum of such company shall, where such order has the effect of increasing the nominal share capital of the company, stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

Insertion of new section 94A.

Share capital to stand increased where an order is made under section 81 (4).

(2) Where, in pursuance of an option attached to debentures issued or loans raised by the company, any public financial institution has converted such debentures or loans into shares in the company, the Central Government may, on the application of such public financial institution, direct that the conditions contained in the memorandum of such company shall stand altered and the nominal share capital of such company shall stand increased by an amount equal to the amount of the value of the shares into which such debentures or loans or part thereof has been converted.

(3) Where the memorandum of a company becomes altered, whether by reason of an order made by the Central Government under sub-section (4) of section 81 or sub-section (2) of this section, the Central Government shall send a copy of such order to the Registrar who shall, on receipt of such order, carry out the necessary alterations in the memorandum of the company.”.

12. After section 108 of the principal Act, the following sections shall

Insertion of new sections 108A to 108H.

be inserted, namely:—

Restric-
tion on the
acquisition
of shares.

'108A. (1) Except with the previous approval of the Central Government, no individual, group, constituent of a group, firm, body corporate, or bodies corporate under the same management, shall jointly or severally acquire or agree to acquire, whether in his or its own name or in the name of any other person, any equity shares in a public company, *** or a private company which is a subsidiary of * a public company, if the total nominal value of the equity shares intended to be so acquired exceeds, or would, together with the total nominal value of any equity share already held in the company by such individual, firm, group, constituent of a group, body corporate, or bodies corporate under the same management, exceeds twenty-five per cent. of the paid-up equity share capital of such company.

(2) Any person who acquires any share in contravention of the provisions of sub-section (1), shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both.

Restric-
tion on
the
transfer.

108B. (1) Every body corporate, or bodies corporate under the same management, holding whether singly or in the aggregate, ten per cent. or more of the nominal value of the subscribed equity share capital of any other company, shall, before transferring one or more of such shares, give to the Central Government an intimation of its or their proposal to transfer such share, and every such intimation shall include a statement as to the particulars of the share proposed to be transferred, the name and address of the person to whom the share is proposed to be transferred, the share holding, if any, of the proposed transferee in the concerned company and such other particulars as may be prescribed.

(2) Where, on receipt of an intimation given under sub-section (1) or otherwise, the Central Government is satisfied that as a result of such transfer, a change in the composition of the Board of directors of the company is likely to take place and that such change would be prejudicial to the interests of the company or to the public interest, it may be order, direct that—

(a) no such share shall be transferred to the proposed transferee:

Provided that no such order shall preclude the company from intimating, in accordance with the provisions of sub-section (1), to the Central Government its proposal to transfer the share to any other person, or

(b) where such share is held in a company engaged in any industry specified in Schedule XIII, such share shall be transferred to the Central Government or to such corporation owned or controlled by that Government as may be specified in the direction.

(3) Where a direction is made by the Central Government under clause (b) of sub-section (2), the share referred to in such direction shall stand transferred to the Central Government or the corporation specified therein, and the Central Government or the specified corporation, as the case may be, shall pay, in cash, to the body cor-

porate or bodies corporate from which such share stands transferred, an amount equal to the market value of such share, within the time specified in sub-section (4).

Explanation.—In this sub-section, “market value” means, in the case of a share which is quoted on any recognised stock exchange, the value quoted at such stock exchange on the date on which the direction is made, and, in any other case, such value as may be mutually agreed upon between the holder of the share and the Central Government or the specified corporation, as the case may be, or in the absence of such agreement, as may be determined by the Court.

(4) The market value referred to in sub-section (3) shall be given forthwith, where there is no dispute as to such value or where such value has been mutually agreed upon, but where there is a dispute as to the market value, such value as estimated by the Central Government or the corporation, as the case may be, shall be given forthwith and the balance, if any, shall be given within thirty days from the date when the market value is determined by the Court.

(5) If the Central Government does not make any direction under sub-section (2) within sixty days from the date of receipt by it of the intimation, given under sub-section (1), the provisions contained in sub-section (2) with regard to the transfer of such share shall not apply.

(6) (a) Every company which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

108C. (1) No body corporate, or bodies corporate under the same management, which holds, or hold in the aggregate,*** ten per cent. or more of the nominal value of the equity share capital of a foreign company, having an established place of business in India, shall transfer any share in such foreign company to any citizen of India or any body corporate incorporated in India except with the previous approval of the Central Government and such previous approval shall not be refused unless the Central Government is satisfied that such transfer would be prejudicial to the public interest.

Restriction
on the
transfer of
shares of
foreign
companies

(2) (a) Every company which makes any transfer of shares in contravention of the provisions of this section, shall be punishable with fine which may extend to five thousand rupees.

(b) Where any contravention of this section has been made by a company, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years.

(c) Every other person who transfers * * any share in contravention of the provisions of this section, shall be punishable

with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

Power of Central Government to direct companies not to give effect to the transfer.

108D. (1) Where the Central Government is satisfied that as a result of the transfer of any share or block of shares of a company, a change in the controlling interest of the company is likely to take place and that such change is prejudicial to the interests of the company or to the public interest, that Government may direct the company not to give effect to the transfer of any such share or block of shares and—

(a) where the transfer of such share or block of shares has already been registered, not to permit the transferee or any nominee or proxy of the transferee to exercise any voting or other rights attaching to such share or block of shares,

(b) where the transfer of such share or block of shares has not been registered, not to permit any nominee or proxy of the transferor to exercise any voting or other rights attaching to such share or block of shares.

(2) Where any direction is made by the Central Government under sub-section (1), the share or the block of shares referred to therein shall stand retransferred to the person from whom it was acquired and thereupon the amount paid by the transferee for the acquisition of such share or block of shares shall be refunded to him by the person from whom such share or block of shares was acquired by such transferee.

(3) If the refund referred to in sub-section (2) is not made within a period of thirty days from the date of the direction referred to in sub-section (1), the Central Government shall, on the application of the person entitled to get the refund, direct, by order, the refund of such amount and such order may be enforced as if it were a decree made by a civil court.

(4) The person to whom any share or block of shares stand retransferred under sub-section (2) shall, on making refund under sub-section (2) or sub-section (3), be eligible to exercise voting or other rights attaching to such share or block of shares.

Time within which refusal to be communicated.

108E. Every request made to the Central Government for accord- ing its approval to the proposal for the acquisition of any share referred to in section 108A or the transfer of any share referred to in section 108C shall be presumed to have been granted unless, within a period of sixty days from the date of receipt of such request, the Central Government communicates to the person by whom the request was made, that the approval prayed for cannot be granted.

Penalty for contra- vention of section 108A, 108B or 108C.

108F. (1) Every person who exercises any voting or other right in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C shall be punishable with imprisonment for a term which may extend to five years and shall also be liable to fine.

5 (2) If any company gives effect to any voting or other right exercised in relation to any share acquired in contravention of the provisions of section 108A, section 108B or section 108C, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, or with imprisonment for a term which may extend to three years, or with both.

10 108G. Nothing contained in section 108A, section 108B, section 108C or section 108D shall apply to the transfer of any share to, or by,—

(a) any company in which not less than fifty-one per cent. of the share capital is held by the Central Government;

(b) any corporation (not being a company) established by or under any Central Act;

(c) any public financial institution specified by or under section 4A.

Nothing in sections 108A to 108D to apply to Government companies, etc.

34 of 1969.

108H. References in sections 108A, 108B, 108C and 108D to shares or share capital, as the case may be, shall be construed as references to shares or share capital, respectively, of a body corporate owning any undertaking to which the provisions of Part A of Chapter III of the Monopolies and Restrictive Trade Practices Act, 1969, apply.

Construction of references to "shares" or "share capital" in sections 108A to 108D.

13. (1) In section 141 of the principal Act, for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted.

Amendment of section 141.

(2) Nothing in sub-section (1) shall affect any order made by the Court under section 141 or any proceeding relating to any matter specified in that section which is pending before the Court at the commencement of the Companies (Amendment) Act, 1973.

30 14. In section 186 of the principal Act, in sub-section (1), for the word "Court", wherever it occurs, the words "Company Law Board" shall be substituted.

Amendment of section 186.

15. After section 187B of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 187C and 187D.

35 "187C. (1) Notwithstanding anything contained in section 150, section 153B or section 187B, a person, whose name is entered, at the commencement of the Companies (Amendment) Act, 1973, or at any time thereafter, in the register of members of a company as the holder of a share in that company but who does not hold the beneficial interest in such share, shall, within such time and in such form as may be prescribed, make a declaration to the company specifying the name and other particulars of the person who holds the beneficial interest in such share.

40

Declaration by persons not holding beneficial interest in any share.

(2) Notwithstanding anything contained elsewhere in this Act, a person who holds a beneficial interest in a share or a class of shares of a company shall, within thirty days from the commencement of the Companies (Amendment) Act, 1973, or within thirty days after his becoming such beneficial owner, whichever is later, make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.

(3) Whenever there is a change in the beneficial interest in such shares the beneficial owner shall, within thirty days, from the date of such change, make a declaration to the company in such form and containing such particulars as may be prescribed.

(4) Notwithstanding anything contained in section 153 where any declaration referred to in sub-section (1), sub-section (2) or sub-section (3) is made to a company, the company shall make a note of such declaration, in its register of members and shall file, within thirty days from the date of receipt of the declaration by it, a return in the prescribed form with the Registrar with regard to such declaration.

(5) (a) If any person, being required by the provisions of sub-section (1), sub-section (2) or sub-section (3), to make a declaration, fails, without any reasonable excuse, to do so, he shall be punishable with fine which may extend to one thousand rupees for every day during which the failure continues.

(b) If a company fails to comply with the provisions of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees for every day during which the default continues.

(6) Any charge, promissory note or any other collateral agreement, created, executed or entered into in relation to any share, by the ostensible owner thereof, or any hypothecation by the ostensible owner of any share, in respect of which a declaration is required to be made under the foregoing provisions of this section, but not so declared, shall not be enforceable by the beneficial owner or any person claiming through him.

(7) Nothing in this section shall be deemed to prejudice the obligation of a company to pay dividend in accordance with the provisions of section 206, and the obligation shall, on such payment, stand discharged.

Investi-
gation of
beneficial
ownership
of share
in certain
cases.

187D. Where it appears to the Central Government that there are good reasons so to do, it may appoint one or more Inspectors to investigate and report as to whether the provisions of section 187C have been complied with with regard to any share, and thereupon the provisions of section 247 shall, as far as may be, apply to such investigation as if it were an investigation ordered under that section."

16. In section 192 of the principal Act, in sub-section (4),—

(i) in item (ii) of clause (ee), for the word and figures "section 294", the words and figures "section 294 or section 294AA" shall be substituted;

(ii) after clause (f), the following clause shall be inserted, namely:—

"(g) copies of the terms and conditions of appointment of a sole selling agent appointed under section 294 or of a sole selling agent or other person appointed under section 294AA."

17. After section 204 of the principal Act, the following section shall be inserted, namely:—

'204A. (1) Except with the previous approval of the—

(a) company in general meeting, and

(b) Central Government,

no company shall, during a period of five years from the commencement of the Companies (Amendment) Act, 1973, appoint as secretary, consultant or adviser or to any other office, by whatever name called,—

(i) any individual, firm or body corporate who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(ii) any associate of the managing agents or secretaries and treasurers as aforesaid:

Provided that where any such appointment has been made before the commencement of the Companies (Amendment) Act, 1973, no such appointment shall be continued by the Company after a period of six months from such commencement unless such appointment has been approved by the company in general meeting and the Central Government before the expiry of the said period.

(2) (a) Where—

(i) any individual, firm or body corporate, who, or which, had at any time after the 15th day of August, 1960, been holding office as the managing agents or secretaries and treasurers of the company, or

(ii) any associate of the managing agents or secretaries and treasurers as aforesaid;

has been appointed by such company at any time during a period of five years preceding the 3rd day of April, 1970, or at any time after that date, as its secretary, consultant or adviser, or to any other office under it, by whatever name called, the Central Government may, if it appears to it that there is good reason for so doing, require the company to furnish to it such information as it may consider necessary, with regard to the terms and conditions of the appointment of such individual, firm or body corporate as secretary, consultant or adviser or as the holder of such other office, for the purpose of determining whether or not such terms and conditions are prejudicial to the interest of the company.

(b) If the company refuses or neglects to furnish any such information, the Central Government may appoint a competent person

Amendment of section 192.

Insertion of new section 204A.

Restrictions on the appointment of former managing agents or secretaries and treasurers to any office.

to investigate and report on the terms and conditions of appointment to any of the offices referred to in clause (a) and the provisions of section 240A shall, so far as may be, apply, to such investigation, as they apply to any other investigation made under any other provision of this Act.

(c) If, after perusal of the information furnished by the company, or, as the case may be, the report submitted by the person appointed under clause (b), the Central Government is of opinion that the terms and conditions of appointment to any of the officers referred to in clause (a) are prejudicial to the interests of the company, it may, by order, make such variations in those terms and conditions as would, in its opinion, no longer render such terms and conditions of appointment prejudicial to the interests of the company.

(d) As from such date as may be specified by the Central Government in the order aforesaid, the appointment referred to in clause (a) shall be regulated by the terms and conditions as varied by that Government.

(3) For the purposes of this section, the expression "appointment" includes re-appointment, employment and re-employment.

Amendment of section 205.

18. In section 205 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) Notwithstanding anything contained in sub-section (1), on and from the commencement of the Companies (Amendment) Act, 1973, no dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), except after the transfer to the reserves of the company of such percentage of its profits for that year, not exceeding ten per cent., as may be prescribed:

Provided that nothing in this sub-section shall be deemed to prohibit the voluntary transfer by a company of a higher percentage of its profits to the reserves in accordance with such rules as may be made by the Central Government in this behalf."

Insertion of new sections 205A and 205B.

Unpaid dividend to be transferred to special dividend account.

19. After section 205 of the principal Act, the following sections shall be inserted, namely:—

"205A. (1) Where, after the commencement of the Companies (Amendment) Act, 1973, a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within forty-two days from the date of the declaration, to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of forty-two days, transfer the total amount of dividend which remains unpaid or in relation to which no dividend warrant has been posted within the said period of forty-two days, to a special account to be opened by the company in that behalf in any scheduled bank, to be called "Unpaid Dividend Account of.....Company Limited/Company (Private) Limited".

(2) Where the whole or any part of any dividend, declared by a company before the commencement of the Companies (Amend-

ment) Act, 1973, remains unpaid at such commencement, the company shall, within a period of six months from such commencement transfer such unpaid amount to the account referred to in sub-section (1).

(3) Where, owing to inadequacy or absence of profits in any year, any company proposes to declare dividend out of the accumulated profits earned by the company in previous years and transferred by it to the reserves, such declaration of dividend shall not be made except in accordance with such rules as may be made by the Central Government in this behalf, and, where any such declaration is not in accordance with such rules, such declaration shall not be made except with the previous approval of the Central Government.

* * * * *

(4) If the default is made in transferring the total amount referred to in sub-section (1) or any part thereof to the unpaid dividend account of the concerned company, the company shall pay, from the date of such default, interest on so much of the amount as has not been transferred to the said account, at the rate of twelve per cent. per annum and the interest accruing on such amount shall enure to the benefit of the members of the company in proportion to the amount remaining unpaid to them.

(5) Any money transferred to the unpaid dividend account of a company in pursuance of this section which remains unpaid or unclaimed for a period of three years from the date of such transfer, shall be transferred by the company to the general revenue account of the Central Government but a claim to any money so transferred to the general revenue account may be preferred to the Central Government by the person to whom the money is due and shall be dealt with as if such transfer to the general revenue account had not been made, the order, if any, for payment of the claim being treated as an order for refund of revenue.

(6) The company shall, when making any transfer under sub-section (5) to the general revenue account of the Central Government any unpaid or unclaimed dividend, furnish to such officer as the Central Government may appoint in this behalf a statement in the prescribed form setting forth in respect of all sums included in such transfer, the nature of the sums, the names and last known addresses of the person entitled to receive the sum, the amount to which each person is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(7) The company shall be entitled to a receipt from the Reserve Bank of India for any money transferred by it to the general revenue account of the Central Government and such receipt shall be an effectual discharge of the company in respect thereof.

(8) If a company fails to comply with any of the requirements of this section, the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the failure continues.

Payment
of unpaid
or un-
claimed
dividend.

205B. Any person claiming to be entitled to any money transferred under sub-section (5) of section 205A to the general revenue account of the Central Government, may apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied, whether on a certificate by the company or otherwise, that such person is entitled to the whole or any part of the money, claimed, make an order for the payment to that person of the sum due to him after taking such security from him as it may think fit.

Amend-
ment of
section
209.

20. In section 209 of the principal Act, in sub-section (4),—

- (i) the brackets and letter "(a)" shall be omitted;
- (ii) clauses (b), (c) and (d) shall be omitted.

Insertion
of new
section
209A.
Inspection
of books
of account,
etc., of
companies.

21. After section 209 of the principal Act, the following section shall be inserted, namely:—

"209A. (1) The books of account and other books and papers of every company shall be open to inspection during business hours—

- (i) by the Registrar, or
- (ii) by such officer of Government as may be authorised by the Central Government in this behalf:

Provided that such inspection may be made without giving any previous notice to the company or any officer thereof;

(2) It shall be the duty of every director, other officer or employee of the company to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the company in his custody or control and to furnish him with any statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the company to give to the person making inspection under this section all assistance in connection with the inspection which the company may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,—

- (i) make or cause to be made copies of books of account and other books and papers, or
- (ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, any person making an inspection under this section shall have the same powers

5 of 1908.

as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of the company at any place.

(6) Where an inspection of the books of account and other books and papers of the company has been made under this section, the person making the inspection shall make a report to the Central Government.

(7) Any officer authorised to make an inspection under this section shall have all the powers that a Registrar has under this Act in relation to the making of inquiries.

(8) If default is made in complying with the provisions of this section, every officer of the company who is in default shall be punishable with fine which shall not be less than five thousand rupees, and also with imprisonment for a term not exceeding one year.

(9) Where a director or any other officer of a company has been convicted of an offence under this section he shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified for holding such office in any company, for a period of five years from such date."

22. In section 217 of the principal Act, after sub-section (2) the following sub-section shall be inserted, namely:—

Amend-
ment of
section
217.

'(2A) (a) The Board's report shall also include a statement showing the name of every employee of the company who—

(i) if employed throughout the financial year, was in receipt of remuneration for that year which, in the aggregate, was not less than thirty-six thousand rupees; or

(ii) if employed for a part of the financial year, was in receipt of remuneration for any part of that year, at a rate which, in the aggregate, was not less than three thousand rupees per month.

(b) The statement referred to in clause (a) shall also indicate,—

(i) whether any such employee is a relative of any director or manager of the company and if so, the name of such director, and

(ii) such other particulars as may be prescribed.

Explanation.—"Remuneration" has the meaning assigned to it in the *Explanation* to section 190'.

Amend-
ment of
section
224.

23. In section 224 of the principal Act,—

(i) to sub-section (1), the following proviso shall be added, namely:—

“Provided that before any appointment or re-appointment of auditor or auditors is made by any company at any annual general meeting, a written certificate shall be obtained by the company from the auditor or auditors proposed to be so appointed to the effect that the appointment or re-appointment, if made, will be in accordance with the limits specified in sub-sections (1B) and (1C).”;

(ii) in sub-section (1A), the words “unless he is a retiring auditor” shall be omitted;

(iii) after sub-section (1A), the following sub-sections shall be inserted, namely:—

‘(1B) On and from the financial year next following the commencement of the Companies (Amendment) Act, 1973, no company shall appoint or re-appoint any person or firm as its auditor if such person or firm is, at the date of such appointment or re-appointment, holding appointment as auditor of more than the specified number of companies:

Provided that in the case of a firm of auditors, “specified number of companies” shall be construed as specified number of companies per partner of the firm:

Provided further that where any partner of the firm is also a partner of any other firm or firms of auditors, the number of companies which may be taken into account, by all the firms together, in relation to such partner shall not exceed the specified number in the aggregate.

(1C) For the purposes of enabling a company to comply with the provisions of sub-section (1B), a person or firm holding, immediately before the commencement of the Companies (Amendment) Act, 1973, appointment as the auditor of a number of companies exceeding the specified number, shall, within sixty days from such commencement, intimate his or its unwillingness to be re-appointed as the auditor from the financial year next following such commencement, to the company or companies of which he or it is not willing to be re-appointed as the auditor; and shall simultaneously intimate to the Registrar the names of the companies of which he or it is willing to be re-appointed as the auditor and forward a copy of the intimation to each of the companies referred to therein.

Explanation I.—For the purposes of sub-section (1B) and (1C), “specified number” means,—

(a) in the case of a person or firm holding appointment as auditor of a number of companies each of which has a paid-up share capital of less than rupees twenty-five lakhs, twenty such companies;

(b) in any other case, twenty companies, out of which not more than ten shall be companies each of which has a paid-up share capital of rupees twenty-five lakhs or more.

Explanation II.—In computing the specified number, the number of companies in respect of which or any part of which any person or firm has been appointed as an auditor, whether singly or in combination with any other person or firm, shall be taken into account.;

(iv) in sub-section (2), for the words "At any annual general meeting", the words "Subject to the provisions of sub-section (1B) and section 224A, at any annual general meeting" shall be substituted.

24. After section 224 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
224A.

'224A. (1) In the case of a company in which not less than twenty-five per cent. of the subscribed share capital is held, whether singly or in any combination, by—

Auditor
not to be
appointed
except
with
the appro-
val of the
company
by special
resolution
in certain
cases.

(a) a public financial institution or a Government company or Central Government or any State Government, or

(b) any financial or other institution established by any Provincial or State Act in which a State Government holds not less than fifty-one per cent. of the subscribed share capital, or

(c) a nationalised bank or an insurance company carrying on general insurance business,

the appointment or re-appointment at each annual general meeting of an auditor or auditors shall be made by a special resolution.

(2) Where any company referred to in sub-section (1) omits or fails to pass at its annual general meeting any special resolution appointing an auditor or auditors, it shall be deemed that no auditor or auditors had been appointed by the company at its annual general meeting, and thereupon the provisions of sub-section (3) of section 224 shall become applicable in relation to such company.

Explanation.—For the purposes of this section,—

17 of 1971.

(a) "general insurance business" has the meaning assigned to it in the General Insurance (Emergency Provisions) Act, 1971;

5 of 1970.

(b) "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.;

25. In section 233B of the principal Act,—

Amend-
ment of
section
233B.

(i) in sub-section (1), for the words beginning with "who shall be either" and ending with "prescribed qualifications", the following shall be substituted, namely:—

23 of 1959.

"who shall be a cost accountant within the meaning of the Cost and Works Accountants Act, 1959;"

Provided that if the Central Government is of opinion that sufficient number of cost accountants within the meaning of the Cost and Works Accountants Act, 1959, are not available for conducting the audit of the cost accounts of companies generally, that Government may, by notification in the Official Gazette direct

that, for such period as may be specified in the said notification, such Chartered Accountant within the meaning of the Chartered Accountants Act, 1949, as possesses the prescribed qualifications, may also conduct the audit of the cost accounts of companies, and thereupon a Chartered Accountant possessing the prescribed qualifications may be appointed to audit the cost accounts of the company.”;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) The auditor under this section shall be appointed by the Board of directors of the company with the previous approval of the Central Government.”;

(iii) in sub-section (4), for the words “Company Law Board”, the words “Central Government” shall be substituted;

(iv) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) (a) A person referred to in sub-section (3) or sub-section (4) of section 226 shall not be appointed or re-appointed for conducting the audit of the cost accounts of a company.

(b) A person appointed, under section 224, as an auditor of a company, shall not be appointed or re-appointed for conducting the audit of the cost accounts of that company.

(c) If a person, appointed for conducting the audit of cost accounts of a company, becomes subject, after his appointment, to any of the disqualifications specified in clause (a) or clause (b) of this sub-section, he shall, on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company.

(6) Upon receipt of an order under sub-section (1), it shall be the duty of the company to give all facilities and assistance to the person appointed for conducting the audit of the cost accounts of the company.

(7) The company shall, within thirty days from the date of receipt of a copy of the report referred to in sub-section (4), furnish the Central Government with full information and explanations on every reservation or qualification contained in such report.

(8) If, after considering the report referred to in sub-section (4) and the information and explanations furnished by the company under sub-section (7), the Central Government is of opinion that any further information or explanation is necessary, that Government may call for such further information and explanation and thereupon the company shall furnish the same within such time as may be specified by that Government.

(9) On receipt of the report referred to in sub-section (4) and the informations and explanations furnished by the company under sub-section (7) and sub-section (8), the Central Government may take such action on the report, in accordance with the provisions of this Act or any other law for the time being in force, as it may consider necessary.

(10) The Central Government may direct the company whose cost accounts have been audited under this section to circulate to its members, along with the notice of the annual general meeting to be held for the first time after the submission of such report, the whole or such portion of the said report as it may specify in this behalf.

(11) If default is made in complying with the provisions of this section, the company shall be liable to be punished with fine which may extend to five thousand rupees, and every officer of the company who is in default, shall be liable to be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both."

26. In section 269 of the principal Act,—

Amend-
ment of
section
269.

(i) in sub-section (1) (including the proviso thereto), the words "for the first time", wherever they occur, shall be omitted;

(ii) to sub-section (1), the following *Explanation* shall be added, namely:—

Explanation.—In this sub-section, and in sub-sections (3) and (5), "appointment" includes "re-appointment" and "whole-time director" includes "a director in the whole-time employment of the company";

(iii) after sub-section (2), the following sub-sections shall be inserted, namely:—

"(3) The Central Government shall not accord its approval under sub-section (1) in any case, unless it is satisfied that—

(a) it is in the interests of the company to have a managing or whole-time director,

(b) the proposed managing or whole-time director of the company is, in its opinion, a fit and proper person to be appointed as such and that the appointment of such person as managing or whole-time director is not against the public interest, and

(c) the terms and conditions of appointment of the proposed managing or whole-time director of the company are fair and reasonable.

(4) While according its approval under sub-section (1), the Central Government may, if it is of opinion that in the interests of the company it is necessary so to do, accord approval to the appointment for a period lesser than the period for which the person is proposed to be appointed by the company.

(5) If the appointment of a person as a managing or whole-time director is not approved by the Central Government, the person so appointed shall vacate his office as such managing or whole-time director on the date on which the decision of the Central Government is communicated to the company, and if he omits or fails to do so, he shall be punishable with fine which may extend to five hundred rupees for every day during which he omits or fails to vacate such office."

Insertion
of new
section
294AA.

27. After section 294A of the principal Act, the following section shall be inserted, namely:—

Power of
Central
Govern-
ment to
prohibit
the
appoint-
ment of
sole
selling
agents in
certain
cases.

294AA. (1) Where the Central Government is of opinion that the demand for goods of any category, to be specified by that Government, is substantially in excess of the production or supply of such goods and that the services of sole selling agents will not be necessary to create a market for such goods, the Central Government may, by notification in the Official Gazette, declare that sole selling agents shall not be appointed by a company for the sale of such goods for such period as may be specified in the declaration.

(2) No company shall appoint any individual, firm or body corporate, who or which has a substantial interest in the company, as sole selling agent of that company unless such appointment has been previously approved by the Central Government.

(3) No company having a paid-up share capital of rupees fifty lakhs or more shall appoint a sole selling agent except with the consent of the company accorded by a special resolution and the approval of the Central Government.

(4) The provisions of sub-section (5), (6) and (7) of section 294 shall, so far as may be, apply to the sole selling, or the sole purchasing or buying, agents of a company.

(5) A company seeking approval under this section shall furnish such particulars as may be prescribed.

(6) Where any appointment has been made of a sole selling agent by a company before the commencement of the Companies (Amendment) Act, 1973, and the appointment is such that it could not have been made except on the authority of a special resolution passed by the company and the approval of the Central Government, if sub-section (2), sub-section (3) and sub-section (8), were in force at the time of such appointment, the company shall obtain such authority and approval within six months from such commencement; and if such authority and approval are not so obtained, the appointment of the sole selling agent shall stand terminated on the expiry of six months from such commencement.

(7) If the company in general meeting disapproves the appointment referred to in sub-section (3), such appointment shall, notwithstanding anything contained in sub-section (6), cease to have effect from the date of the general meeting.

(8) The provisions of this section except those of sub-section (1), shall apply so far as may be to the appointment by a company of a sole agent for the buying or purchasing of goods on behalf of the company.

Explanation.—In this section,—

(a) “appointment” includes “re-appointment”,

(b) “substantial interest”,—

(i) in relation to an individual, means the beneficial interest held by such individual or any of his relatives,

whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company, whichever is the lesser;

(ii) in relation to a firm, means the beneficial interest held by one or more partners of the firm or any relative of such partner, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company whichever is the lesser;

(iii) in relation to a body corporate, means the beneficial interest held by such body corporate or one or more of its directors or any relative of such director, whether singly or taken together, in the shares of the company, the aggregate amount paid-up on which exceeds five lakhs of rupees or five per cent. of the paid-up share capital of the company which ever is the lesser.

28. In section 297 of the principal Act, to sub-section (1), the following proviso shall be added, namely:—

Amend-
ment of
section
297.

“Provided that in the case of a company having a paid-up share capital of not less than rupees one crore, no such contract shall be entered into except with the previous approval of the Central Government.”.

29. In section 314 of the principal Act,—

Amend-
ment of
section
314.

(i) in clause (b) of sub-section (1), for the portion beginning with “no partner or relative” and ending with “legal or technical adviser”, the words “no partner or relative of such director, no firm in which such director, or a relative of such director is a partner, no private company of which such director is a director or member, and no director or manager of such a private company, shall hold any office or place of profit carrying a total monthly remuneration of five hundred rupees or more,

except that of managing director or manager,” shall be substituted;

(ii) after sub-section (1A), the following sub-section shall be inserted, namely:—

“(1B) Notwithstanding anything contained in sub-section (1),—

(a) no partner or relative of a director or manager,

(b) no firm in which such director or manager, or relative of either, is a partner,

(c) no private company of which such a director or manager or relative of either, is a director or member,

shall hold any office or place of profit in the company which carries a total monthly remuneration of not less than three thousand rupees, except with the prior consent of the company

by a special resolution and the approval of the Central Government:

Provided that in a case where no office of profit could have been held in the company by a person if this section had been in force at the time when the appointment or re-appointment to such office of profit was made, the company shall, within a period of six months from the commencement of the Companies (Amendment) Act, 1973, obtain the approval of the company in general meeting and of the Central Government for the holding, by such person of the office of profit.”;

(iii) sub-section (2) shall be re-lettered as clause (a) thereof, and after clause (a), as so re-lettered, the following clause shall be inserted, namely:—

“(b) The company shall not waive the recovery of any sum refundable to it under clause (a) unless permitted to do so by the Central Government.”;

(iv) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2B) If any office or place of profits is held in contravention of the provisions of sub-section (1B) or, as the case may be, the proviso thereto, the director, partner, relative, firm, private company or manager concerned shall be deemed to have vacated his or its office as such on and from the date next following the date of the general meeting of the company referred to in sub-section (1B) or, as the case may be, the proviso thereto, and shall be liable to refund to the company any remuneration received or the monetary equivalent of any perquisite or advantage enjoyed by him or it for the period immediately preceding the date aforesaid in respect of such office or place of profit.”;

(v) in sub-section (3), for the words “within the meaning of sub-section (1)”, the words “within the meaning of this section” shall be substituted;

(vi) after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) Nothing in this section shall apply to a person, who being the holder of any office of profit in the company, is appointed by the Central Government, under section 408, as a director of the company.”

* * * * *

Insertion
of new
section
383A.

Certain
companies
to have
secretaries.

30. After section 383 of the principal Act, the following section shall be inserted, namely:—

“383A. (1) Every company having a paid-up share capital of * * * rupees twenty-five lakhs or more shall have a whole-time secretary, * * * and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

(2) Where, at the commencement of the Companies (Amendment) Act, 1973,—

(a) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company;

(b) any individual is holding office as the secretary of more than one company having a paid-up share capital of rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies."

31. In section 408 of the principal Act,—

Amendment of section 408.

(i) in sub-section (1), for the words "not more than two persons", the words "such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest" shall be substituted;

(ii) in sub-section (2), for the words "not more than two persons", the words "such number of persons as the Central Government may, by order in writing, specify as being necessary to effectively safeguard the interest of the company, or its shareholders or the public interest" shall be substituted;

(iii) after sub-section (5), the following sub-sections shall be inserted, namely:—

"(6) Notwithstanding anything contained in this Act or in any other law for the time being in force where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs.

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company."

32. Section 591 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1), as so re-numbered, the following sub-section shall be inserted, namely:—

Amendment of section 591.

"(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an

established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.”.

Amendment of section 600.

33. In section 600 of the principal Act, sub-section (3) shall be re-lettered as clause (a) thereof, and after clause (a), as so re-lettered, the following clause shall be inserted, namely:—

“(b) On and from the commencement of the Companies (Amendment) Act, 1973,—

(i) the provisions of section 159 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India;

(ii) the provisions of section 209A and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India.”.

Amendment of section 616.

34. In section 616 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(e) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notification.”.

Amendment of section 619.

35. In section 619 of the principal Act, to sub-section (2), the following proviso shall be added, namely:—

“Provided that limits specified in sub-sections (1B) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub-section.”.

Insertion of new section 619B.

Provisions of section 619 to apply to certain companies.

36. After section 619A of the principal Act, the following section shall be inserted, namely:—

“619B. The provisions of section 619 shall apply to a company in which not less than fifty-one per cent. of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely:—

(a) the Central Government and one or more Government companies;

(b) any State Government or Governments and one or more Government companies;

(c) the Central Government, one or more State Governments and one or more Government companies;

(d) the Central Government and one or more corporations owned or controlled by the Central Government;

(e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government;

(f) one or more corporations owned or controlled by the Central Government or the State Government;

(g) more than one Government company.”.

37. In section 637A of the principal Act,—

Amendment of section 637A.

(i) in sub-section (1), for the words “Central Government”, wherever they occur, the words “Central Government or Company Law Board” shall be substituted;

(ii) in sub-section (2),—

(a) for the words “Central Government”, the words “Central Government or Company Law Board” shall be substituted;

(b) in clauses (a) and (b), after the words “that Government”, the words “or Board” shall be inserted.

38. After section 637A of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 637AA.

“637AA. Notwithstanding anything contained in section 198, section 309 or section 637A, the Central Government may, while according its approval under section 269, to any appointment or to any remuneration under section 309, section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, the Central Government shall have regard to—

Power of Central Government to fix a limit with regard to remuneration.

(a) the financial position of the company;

(b) the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent;

(c) the remuneration or commission drawn by him from any other company;

(d) professional qualifications and experience of the individual concerned;

(e) public policy relating to the removal of disparities in income.”.

39. In section 641 of the principal Act in sub-section (3), for the portion beginning with “comprised in one session or” and ending with “session immediately following”, the following shall be substituted, namely:—

Amendment of section 641.

“comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,”.

Amend-
ment of
section
642.

40. In section 642 of the principal Act, in sub-section (3), for the portion beginning with "comprised in one session or" and ending with "session immediately following", the following shall be substituted, namely:—

"comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid,".

Insertion
of new
Schedule
XIII.

41. After Schedule XII of the principal Act, the following Schedule shall be inserted, namely:—

"SCHEDULE XIII

(See section 108B)

PART I

1. Aircraft.
2. Air transport.
3. Arms and ammunition and allied items of defence equipment.
4. Atomic energy.
5. Coal and lignite.
6. Heavy castings and forgings of iron and steel.
7. Heavy electrical plant including large hydraulic and steam turbines.
8. Heavy plant and machinery required for iron and steel production, for mining, for machine tool manufacture and for such other basic industries as may be specified by the Central Government.
9. Iron and steel.
10. Mineral oils.
11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.
12. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.
13. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.
14. Railway transport.
15. Ship-building.
16. Telephones and telephone cables, telegraph and wireless apparatus (excluding radio receiving sets).

PART II

1. Aluminium and other non-ferrous metals not included in Part I.
2. All other minerals except "minor minerals" as defined in rule 3 of the Minerals Concession Rules, 1949.
3. Antibiotics and other essential drugs.

4. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dyestuffs and plastics.

5. Carbonisation of coal.

6. Chemical pulp.

7. Ferro alloys and tool steels.

8. Fertilizers.

9. Machine tools.

10. Road transport.

11. Sea transport.

12. Synthetic rubber.”.

42. For section 22 of the Securities Contracts (Regulation) Act, 1956 the following section shall be substituted, namely:—

Substi-
tution of
new sec-
tion for
section
22 of Act
42 of
1956.

‘22. Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of any public company, the company shall be entitled to be furnished with reasons for such refusal, and may,—

Right
of appeal
against
refusal
of stock
ex-
changes
to list
securities
of public
companies.

(a) within fifteen days from the date on which the reasons for such refusal are furnished to, it

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1) of section 73 of the Companies Act, 1956 (hereafter in this section referred to as the “specified time”), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow,

1 of 1956.

appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard,—

(i) vary or set aside the decision of the stock exchange, or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government’.

Amend-
ment of
Act 54 of
1969.

43. In the Monopolies and Restrictive Trade Practices Act, 1969, in clause (g) of section 2,—

(i) in sub-clause (iii) (c), the words “within the meaning of section 370 of the Companies Act, 1956,” shall be omitted;

1 of 1956.

(ii) in sub-clause (v), the words “within the meaning of the said section 370” shall be omitted;

(iii) after sub-clause (vii), but before the *Illustration*, the following *Explanations* shall be inserted, namely:—

“*Explanation 1.*—For the purposes of this Act, two undertakings, owned by bodies corporate, shall be deemed to be under the same management,—

(i) if one such body corporate exercises control over the other or both are under the control of the same group or any of the constituents of the same group; or

(ii) if the managing director or manager of one such body corporate is the managing director or manager of the other; or

(iii) if one such body corporate holds not less than one-third of the equity shares in the other or controls the composition of not less than one-third of the total membership of the Board of directors of the other; or

(iv) if one or more directors of one such body corporate constitute, or at any time within a period of six months immediately preceding the day when the question arises as to whether such bodies corporate are under the same management, constituted (whether independently or together with the relatives of such directors) one-third of the directors of the other; or

(v) if the same individual or individuals belonging to a group, while holding (whether by themselves or together with their relatives) not less than one-third of the equity shares in one such body corporate also hold (whether by themselves or together with their relatives) not less than one-third of the equity shares in the other; or

(vi) if the same body corporate or bodies corporate belonging to a group, holding not less than one-third of the equity shares in one body corporate, also hold not less than one-third of the equity shares in the other; or

(vii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individual (whether independently or together with his relatives) or the same body corporate (whether independently or together with its subsidiaries); or

(viii) if not less than one-third of the total voting power with respect to any matter relating to each of the two bodies corporate is exercised or controlled by the same individuals

belonging to a group or by the same bodies corporate belonging to a group, or jointly by such individual or individuals and one or more of such bodies corporate; or

(ix) If the directors of the one such body corporate are accustomed to act in accordance with the directions or instructions of one or more of the directors of the other, or if the directors of both the bodies corporate are accustomed to act in accordance with the directions or instructions of an individual, whether belonging to a group or not.

Explanation II.—If a group exercises control over a body corporate, that body corporate and every other body corporate, which is a constituent of or controlled by, the group shall be deemed to be under the same management.

Explanation III.—If two or more bodies corporate under the same management hold, in the aggregate, not less than one-third equity share capital in any other body corporate, such other body corporate shall be deemed to be under the same management as the first-mentioned bodies corporate.

Explanation IV.—In determining whether or not two or more bodies corporate are under the same management, the shares held by public financial institutions in such bodies corporate shall not be taken into account.”.

S. L. SHAKDHER,
Secretary-General.

